

ALASKA ASSOCIATION OF COLLABORATIVE PROFESSIONALS

PROTOCOLS OF PRACTICE

FOR

TEAMS

COLLABORATIVE FAMILY LAWYERS

MENTAL HEALTH PROFESSIONALS

FINANCIAL PROFESSIONALS

MEDIATORS

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SUBTITLE A DEFINITIONS

SECTION 1.0. UNIVERSAL DEFINITIONS

- (a) **AKACP.** The Alaska Association of Collaborative Professionals.
- (b) **Allied professional.** An individual engaged as a professional, by the team, to assist in the Collaborative law process. Financial Professionals, Mediators, and Mental Health Professionals are examples of allied professionals.
- (c) **Child Specialist.** A Mental Health Professional who has training in child development and knowledge of the particular factors involved in resolving child-related matters.
- (d) **Client.** A party to the legal matter, who signs a Collaborative law agreement.
- (e) **Collaborative law.** A process wherein the clients and their lawyers sign an agreement to negotiate in good faith to settle a legal matter without resorting to a court's imposing resolution; to provide all relevant information; and to engage only Special Issues Consultants and allied professionals to assist in resolving the matter. The written agreement must provide that the lawyers shall withdraw if the matter requires litigation. The agreement may contain other provisions not inconsistent with the foregoing requirements.
- (f) **Collaborative Lawyer.** A lawyer trained in Collaborative law who represents clients in Collaborative law matters. A Collaborative Lawyer must be a member of both a local practice group and the International Academy of Collaborative Professionals.
- (g) **Collaborative matter.** A particular case being conducted through the Collaborative law process.
- (h) **Collaborative team.** The sum of the Collaborative Lawyers, Mental Health Professionals, Financial Professionals, and other allied professionals engaged in the Collaborative matter/case.
- (i) **Communications Facilitator.** A Mental Health Professional or Mediator who facilitates effective communication among participants within the framework of the Collaborative process and interest-based negotiation.
- (j) **Debrief.** A meeting held between team professionals or between the lawyer and their client, subsequent to a full meeting of clients and professionals, to evaluate performance, address issues, and identify agenda items for the next meeting.
- (k) **Financial Professional (FP).** A potential or active Collaborative team member who meets the minimum standards for Collaborative financial practitioners set forth by the International Academy of Collaborative Professionals and who publicly displays that designation on their website and other relevant marketing platforms. In the Alaska Collaborative model, the FP on the team is considered a neutral professional.
- (l) **Joint meeting.** A meeting of the clients and all their chosen Collaborative professionals.

- (m) **Mediator.** An individual whose role is to facilitate as a neutral in a Collaborative process and promote an agreement between the clients. The Mediator can function as a neutral either from the outset of the Collaborative process (in which case they are referred to as the “neutral professional”) or can join the process later, to break an impasse between the clients or any members of the team.
- (n) **Mental Health Professional (MHP).** A potential or active Collaborative team member who is licensed or provisionally licensed (working under supervision of a collaboratively trained, licensed MHP) as a marriage and family therapist, professional counselor, psychologist, psychological associate, social worker, or psychiatrist and who meets the minimum standards for Collaborative Mental Health Practitioners set forth by the International Academy of Collaborative Professionals. In the Alaska Collaborative model, the MHP on the team is considered a neutral party and is referred to as the “neutral professional”. However, if a client is referred to an MHP for therapy, that MHP is not considered part of the Collaborative team and is therefore, not neutral.
- (o) **Neutral Allied Mental Health Professional Participation Agreement.** A contract between the clients and the Mental Health Professional that defines the Mental Health Professional's involvement in the Collaborative law matter.
- (p) **Neutrality/neutral.** Not aligned with or favoring one participant against another. Neutrality does not mean the absence of an opinion regarding a specific issue. A Collaborative team professional who is employed to ensure neutrality is referred to as a “neutral professional.”
- (q) **Offline meeting.** A meeting of one or both clients with one of the professionals on the Collaborative team. For example, the clients may meet with the Financial Professional to identify and value marital assets to determine a proposed division. That proposal will often be finalized in a meeting that includes the lawyers.
- (r) **Parenting coordinator.** A Mental Health Professional who facilitates resolution of issues related to the clients’ children and their co-parenting relationship.
- (s) **Participant.** Any individual involved in the Collaborative process as a Collaborative Lawyer, client, other involved family member, Mental Health Professional, Financial Professional, or other allied professional.
- (t) **Special Issues Consultant.** A professional (also referred to as a neutral expert or advisor) jointly engaged by the participants to provide impartial information, opinions, or recommendations regarding specific issues to be resolved. These professionals are not considered a member of the Collaborative team. Examples of Special Issues Consultants include child specialists, business valuation experts, real estate appraisers, and brokers used for broker’s opinion of value on real estate.
- (u) **Collaborative Team/Team.** The sum of the Collaborative professionals involved in a Collaborative matter. The term does NOT include the clients in a Collaborative matter.
- (v) **Team meeting.** A meeting of the Collaborative professionals without clients present. Minutes are generally not taken and the content of the meeting may or may not be shared with clients.

SUBTITLE B
PROTOCOLS FOR TEAMS INVOLVED IN A COLLABORATIVE
MATTER

INTRODUCTION

Alaskan lawyers have resolved family law disputes, utilizing Collaborative law, since 2008—after professional trainers from around the nation brought Collaborative, in-state training, to interested lawyers. This eventually resulted in the formation of The Alaska Association of Collaborative Professionals (AKACP), a nonprofit organization that helps to train lawyers and other allied professionals in Collaborative law. AKACP includes all Collaborative professionals who help serve the clients’ needs, while the vision remains the same: *to create a culture in which Collaborative law is the prevailing process for the resolution of family law matters.*

The AKACP believes it is prudent to have protocols of practice that assist lawyers and allied professionals in handling a Collaborative matter. In drafting these protocols, the AKACP has relied upon materials from other practice groups in the country and particularly from the Collaborative Law Institute of Texas, Inc. (the Institute), with their permission. As stated in the Protocols of Practice for Collaborative Family Lawyers, the Institute relied primarily on books and articles by acknowledged leaders in the field of Collaborative law in the United States and Canada, as well as the five-year experience base of Texas Collaborative Lawyers.

Membership in the Alaska Association of Collaborative Professionals is open not only to lawyers, but also to Mental Health Professionals, Financial Professionals, Mediators, resolution facilitators, and other allied professionals. Each profession makes its own unique contribution to Collaborative law, has its own special relationship to the Collaborative law process, and is guided by unique professional protocols. The AKACP encourages and supports allied professional members in developing and implementing protocols appropriate to their respective practices and consistent with the goals of the AKACP. Further, the AKACP looks forward to promoting similar projects within those professions to the end that a common expectation of the highest professionalism will exist among all members of the AKACP.

The Alaska Association of Collaborative Professionals (AKACP) recommends the use of a four-person professional team consisting of one lawyer for each client in the Collaborative matter, a Financial Professional (FP), and a Mental Health Professional (MHP) or Mediator. In the Alaska Collaborative model, the MHP and the Mediator generally fill the same role as the Communications Facilitator, often referred to as the “neutral professional.” However, there are occasions in which the MHP acts as the Communications Facilitator and because the negotiations have reached an impasse, a Mediator is called in to break the impasse and assist in resolving the case.

CHAPTER 1

SECTION 1.01. SHORT TITLE

These protocols may be cited as "Protocols of Practice for Collaborative Teams."

SECTION 1.02. DEFINITIONS

All definitions are contained in "Universal Definitions," subtitle A of this document.

SECTION 1.03. APPLICATION OF PROFESSIONAL RULES

These protocols are subordinate to the rules of professional conduct governing each respective professional.

CHAPTER 2 FUNDAMENTALS OF TEAM PRACTICE

SECTION 2.01. FORMING THE PROFESSIONAL TEAM

Any professional consulting with a client who is considering divorce may screen for and recommend the Collaborative model of dispute resolution. If the professional is not a lawyer, that professional should refer the client to collaboratively trained lawyers. If the professional is a lawyer, the lawyer should offer to provide information about the Collaborative process and/or a list of other Collaborative Lawyers for the other spouse. The AKACP website lists all of the current members by profession. Once retained, the lawyers contact each other and agree on the other allied professionals that will make the best team, then contact those professionals and form the team.

SECTION 2.02. INITIAL TEAM CALL

An initial team call is scheduled to form the team, determine if any conflicts of interest exist, and to discuss availability, scheduling, fees, and retainers. The initial team meeting (typically face-to-face) is also scheduled at this time.

SECTION 2.03. MEETINGS OF TEAM PROFESSIONALS

Team meetings should occur prior to the joint meetings, to set the agenda, and immediately after, to debrief. Generally, lawyers walk their clients to the door after the joint meeting and then return to the room to debrief with the other professionals. Team meetings are typically held at the office of the Financial Professional and the neutral professional, alternately.

SECTION 2.04. JOINT MEETINGS

A Collaborative case generally takes a minimum of three to four joint meetings to achieve resolution of the dispute. Experience has shown that it might behoove Collaborative professionals to suggest to clients that the group aspire to conclude the process in no more than six joint meetings. This helps to control costs and supports efficient use of time and resources.

- i When appropriate, team lawyers should remind clients of the Collaborative roadmap and expectations of conduct.

- ii Professionals should be mindful of the costs and benefits of taking breaks during a joint meeting.
- iii Six-way meetings are very expensive.

SECTION 2.05. SCHEDULING AND ARRANGEMENTS

The professionals acknowledge the need to meet regularly with the clients and other professional team members. A joint meeting should not be adjourned without scheduling at least one, and preferably two, subsequent meetings. Meetings should include provisions for:

1. Rotation of meeting sites unless the clients desire otherwise.
2. Seating arrangements that avoid a confrontational atmosphere. Ideally, the clients sit on the same side of the table or the team uses a round table.
3. Private space for the guest lawyer and client to meet before, during, and after the joint meeting.
4. Advance preparation to include distribution of sufficient copies of necessary documents for the meeting.
5. A hospitable venue for all participants that provides food, beverage, access to phones, fax, duplication, Internet, pens, paper, calculators, and other helpful items.

SECTION 2.06. AGENDA FOR MEETINGS

A written agenda should be prepared two days in advance of a joint meeting by the Communications Facilitator, Mediator, or other neutral professional, in coordination with the Collaborative Lawyers and the Financial Professional. The agenda should govern each joint meeting.

- i The lawyers should consult with their clients to make sure that all identified issues are included in the agenda. The clients should be encouraged to schedule agenda items in advance, through their lawyers. The agenda should provide specific information that allows the participants to sufficiently prepare for discussion of identified issues.
- ii Matters that arise during a joint meeting that are not on the agenda should be deferred until the end of the meeting or placed on the next meeting's agenda, as participants agree. The Collaborative Lawyer should discourage clients from raising issues not on the agenda, to avoid the element of surprise.
- iii A report on long-term homework assignments (not expected to be completed between any two meetings) should be included on the agenda, to encourage accountability.
- iv Approval of the minutes should be an agenda item for each meeting.
- v The agenda of the first joint meeting ordinarily should include the reading aloud of the Collaborative Law Participation Agreement by the clients and the team as

well as, the signing of the agreement. The agenda for the first joint meeting should also include the ascertainment of the clients' goals and interests and should be distributed in advance of the meeting. A restatement of goals and interests as the first agenda item in all subsequent meetings may serve to focus the clients.

SECTION 2.07. MINUTES

Minutes of joint meetings should be prepared and distributed within two business days after each meeting, by the designated Collaborative Lawyer.

- i The minutes should reflect the essential issues and items that were discussed as well as any agreements reached. Editorial bias should be avoided.
- ii The minutes should serve as a record of unfinished assignments and documents still needed.
- iii No minutes are kept during team meetings and hence, are not shared with clients.

SECTION 2.08. TEAM COMMUNICATIONS

It is strongly recommended that team communications regarding sensitive issues be conducted by phone or during face-to-face meetings. Email is dangerous. One never knows when an email might be forwarded, accidentally addressed to the wrong person, or otherwise disclosed.

Professional team members need to present a unified front to their mutual clients and take care to apprise the other team members of potential issues.

SECTION 2.09. DEBRIEF

Debriefs are an important step in building team cohesiveness and improving professional skills. A debrief is typically 15-30 minutes in duration. The debrief agenda might include:

1. Forthright discussion of what worked well and did not work well during the joint meeting;
1. Changes that should be made in the next joint meeting;
2. Issues with team dynamics;
3. Constructive criticism and helpful suggestions;
4. Process issues related to the meeting such as starting late, sticking to the agenda, and making time to schedule future meetings;
5. Expected date that minutes will be available for review and expected turnaround time for review;
6. Whether the seating arrangement worked; and
7. Discussion of the need for offline work.

After the hearing is held to put the agreements on record, the team should consider meeting (typically at no charge to the clients) to conduct a final debrief.

SECTION 2.10. CANCELLING MEETINGS

If a professional realizes that they or one of the clients will not be sufficiently prepared to address discussion points at the meeting, that professional should consider cancelling the meeting.

SECTION 2.11. THE IMPORTANCE OF OFFLINE WORK

To save time and resources, it is important for team professionals to work offline with the clients.

SECTION 2.12. DOCUMENTATION

At a minimum, professionals shall keep records for the duration of the Collaborative process and for a year after the court's orders have been issued or the case otherwise resolves (as in, a reconciliation). In addition, the professionals shall keep records in accordance with their professional standards.

SUBTITLE C
PROTOCOLS OF PRACTICE FOR COLLABORATIVE FAMILY
LAWYERS

INTRODUCTION

These protocols are to be adopted and used by lawyers on a voluntary basis. Some of the protocols are designed to deal with issues commonly encountered in Collaborative law and should be viewed as strong admonitions, such as the prohibition against serving as a Collaborative Lawyer when the client has already engaged a litigation lawyer. Other protocols and commentaries are merely descriptions of sound practices, such as the meeting room arrangements. The AKACP hopes Collaborative Lawyers find the protocols useful and that the practicing bar embraces the protocols as the norm for handling a Collaborative matter.

These protocols apply only to lawyers and address the following: the relationship between the lawyer and the client; the relationship between the Collaborative Lawyers; the relationship between the Collaborative Lawyer and allied professionals; protecting the process; fundamentals of the process; the use of Special Issues Consultants and other outside advisors; drafting considerations; withdrawal, termination of the process; and transition to a litigation lawyer.

CHAPTER 1
GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE

These protocols may be cited as "Protocols of Practice for Collaborative Family Lawyers."

SECTION 1.02. DEFINITIONS.

All definitions are contained in "Universal Definitions," subtitle A of this document.

SECTION 1.03. APPLICATION OF PROFESSIONAL RULES

These protocols are subordinate to the rules of professional conduct governing the lawyer. A member of the Alaska Bar is governed by the Alaska Rules of Professional Conduct. These protocols must be interpreted in a manner consistent with those rules.

SECTION 1.04. COMPLIANCE WITH PROTOCOLS

These protocols are designed for voluntary use by lawyers. The Alaska Association of Collaborative Professionals strongly recommends that its members and other lawyers follow the protocols in good faith. The ultimate sanction against a lawyer who uses tactics or trickery to abuse or evade the Collaborative process, or condones or encourages such abuse by the client, is the diminution of that lawyer's reputation.

The Alaska Association of Collaborative Professionals urges adoption of these protocols as expectations and aspirations of membership.

Because these protocols aspire to a level of practice above the minimum established in the Alaska Bar Rules of Professional Conduct, it is inappropriate to use these protocols to define the level of conduct required of lawyers for purposes of professional liability or lawyer discipline.

SECTION 1.05. STANDARDIZED FORMS

The Alaska Association of Collaborative Professionals urges the use of standardized forms in a Collaborative matter. This assists in compliance with these protocols, assures that all participants are working from a common set of materials, and enhances the quality of meetings and communications.

CHAPTER 2 THE COLLABORATIVE LAWYER-CLIENT RELATIONSHIP

SECTION 2.01. INFORMING THE CLIENT

To avoid the common client misperception that litigation is the only process available for family law matters, the Collaborative Lawyer should inform each prospective family law client, no later than the initial consultation, about all legal alternatives for resolving the client's matter, including Collaborative law and mediation. These alternatives should be explained in terms of process, risk, harm, privacy, delay, and cost. It is recommended that the lawyer establish office protocols to provide that information. Use of published materials, in print or electronic form, is advisable in assisting the client to be fully informed about the process of Collaborative law. Such information can be obtained from the Alaska Association of Collaborative Professionals or the International Academy of Collaborative Professionals.

When addressing the comparative costs of a matter handled collaboratively versus litigation, the Collaborative Lawyer is strongly encouraged to explain that the actual cost will depend on the services required by the clients and the complexity of the matter. This supports a fully informed client regarding the process of Collaborative law.

The Collaborative Lawyer shall inform the clients of their options for professionals in forming a Collaborative team.

SECTION 2.02. SUITABILITY FOR COLLABORATIVE ENGAGEMENT

The Collaborative Lawyer should be aware that certain matters might be inappropriate for the Collaborative process and should exercise prudent judgment in accepting or declining a Collaborative engagement.

Appropriate engagements are those in which (1) the clients' demonstrate no inclination to dishonesty of purpose or fraud (2) the clients' objectives are consistent with the principles of Collaborative law, and (3) the clients' do not appear motivated to use Collaborative Law to gain

an advantage, regardless of magnitude or materiality e.g. furthering a position to prepare for litigation.

A Collaborative Lawyer should decline representation of a prospective client if the Collaborative Lawyer learns the prospective client has engaged a litigation lawyer for the matter or the client will be simultaneously consulting with a litigation lawyer.

Positioning, disregarding a party's input, or acting in a biased manner is conduct that is inconsistent with these protocols and is contrary to the spirit of the Collaborative process.

Collaborative law is not to be used as a subterfuge by clients with ulterior motives.

The Collaborative Lawyer acknowledges that choosing Collaborative Law as a dispute resolution process is the clients' prerogative.

The Collaborative Lawyer should carefully assess matters for untreated mental health issues, addictions, and family violence to determine whether the lawyer is willing and able (with the assistance of the team's MHP) to handle the matter.

The Collaborative Lawyer should not handle a particular case as a Collaborative matter if a lawyer does not represent the other party.

Should a Collaborative Lawyer be confronted with a client or allied professional who wishes to exploit the Collaborative law process, the Collaborative Lawyer should assess:

Whether the Collaborative Lawyer, with or without the assistance of other members of the Collaborative team, can and is willing to overcome the barriers to the honest application of the Collaborative law process;

Whether the Collaborative Lawyer possesses the requisite skills to overcome the barriers in a reasonable timeframe and within the Collaborative spirit; and

Whether there are adequate resources (such as other allied professionals, co-counsel, or referral to a more experienced Collaborative Lawyer) available to supplement the Collaborative Lawyer's expertise.

Assessment of the matter may require the Collaborative Lawyer to obtain written releases from the client in order to make a proper evaluation.

When the Collaborative Lawyer becomes unable to adequately perform his or her duties during an engagement, he or she shall consider referral to another Collaborative Lawyer and follow the steps prescribed herein [See Chapter 12, Subtitle C. Withdrawal and Termination.]

SECTION 2.03. FAITHFUL REPRESENTATION OF CLIENT

- (a) The Collaborative Lawyer should commit the time and resources necessary to gain a clear understanding of the client's values; assist the client in identifying and articulating the client's interests and goals in a manner consistent with the client's values; and explore with the client the means by which the Collaborative law process can satisfy the client's interests and achieve the stated goals in a constructive manner.

- (a) The Collaborative Lawyer should inform the client, as soon as feasible, about interest-based negotiation and the priority that Collaborative law gives to preserving an ongoing relationship between the clients through the non-judicial resolution of the client's matter.
- (b) The Collaborative Lawyer should at all times be faithful in the representation of the client and diligently represent the client in pursuit of the client's stated goals. This faithful representation includes informing the client about the law and its application to the client's matter on an ongoing basis; preserving confidential communications; and assisting the client to develop approaches, collaboratively with the other participants, to resolving the matter without judicial intervention.
- (c) The Collaborative Lawyer should explain to the client that the process allows settlement of the matter outside the limits of a judicially imposed solution, subject to securing court approval of the settlement.

CHAPTER 3

THE RELATIONSHIP BETWEEN COLLABORATIVE LAWYERS

SECTION 3.01. RESPECT FOR THE OTHER LAWYER AND CLIENT

The Collaborative Lawyer recognizes a heightened requirement to be respectful at all times. Violation of this expectation jeopardizes the prospects of a successful collaboration and causes distrust among the participants. A Collaborative Lawyer should not engage in conduct to embarrass or disparage the other lawyer or other client. The Collaborative Lawyer should advise the client to avoid disparaging or negative remarks about the other client or lawyer. If emotions appear to be high or respectful communications prove difficult for the clients, it might be advisable to engage the services of a neutral allied professional, in order to assist the clients in achieving more effective interactions.

SECTION 3.02. MUTUAL RELIANCE

Representation of a client in a Collaborative matter means the lawyer, in good faith, believes the client is acting in a manner consistent with the objectives of Collaborative law. The Collaborative Lawyer knows that other participants in the matter are relying upon this representation. If the Collaborative Lawyer discovers that the client is acting in bad faith and is unable to remedy the problem by counseling the client, the Collaborative Lawyer should terminate the process [See Chapter 12. Subtitle C. Withdrawal and Termination.]

SECTION 3.03. PRIVATE COMMUNICATIONS WITH THE OTHER LAWYER

- (a) The Collaborative Lawyer recognizes the need, on occasion, to communicate privately with the other lawyer. The Collaborative Lawyer should explain to the client that such communications are commonplace and intended to assist in the Collaborative matter.
- (d) The Collaborative Lawyer should confer with the other lawyer and the communications facilitator before joint meetings, to assist in setting the agenda. The content of communications between Collaborative Lawyers is dramatically different from the type

of communications between adversarial lawyers. Since the primary goal of joint meetings is to move the clients towards settlement, Collaborative Lawyers are facilitators in the process, sharing their clients' reactions to each lawyer's demeanor and communication styles, and discussing effective communication techniques. Collaborative Lawyers should strategize together on the optimum timing to raise sensitive subjects and brainstorm techniques and approaches to assist both clients in navigating the Collaborative path.

SECTION 3.04. SHARING OF COMMUNICATIONS

The Collaborative Lawyer recognizes that clients in a Collaborative matter may or may not choose to communicate directly with each other. A Collaborative Lawyer should not discourage communications so long as the communications are agreed upon and assist the Collaborative process. The Collaborative Lawyer should forward promptly to the other lawyer all client-to-client communications received. Communications received by one Collaborative Lawyer from the other client should be forwarded immediately to the other lawyer.

SECTION 3.05. THE ADDITIONAL COLLABORATIVE LAWYER

In the situation that a Collaborative Lawyer must leave a Collaborative case and a new Collaborative Lawyer seeks to represent the client needing new representation, the new Collaborative Lawyer shall sign the Collaborative Law Participation Agreement. If this is not promptly done, the other party may terminate the Collaborative matter.

CHAPTER 4 THE RELATIONSHIP BETWEEN THE COLLABORATIVE LAWYER AND ALLIED PROFESSIONAL

SECTION 4.01. THE ROLE OF THE ALLIED PROFESSIONAL

The Collaborative Lawyer acknowledges that the interests of the client may best be served by engaging an allied professional to participate in the Collaborative matter. The participation must be a joint decision of the clients and the lawyers.

The AKACP encourages the practice of using a team of four professionals consisting of a Financial Professional, Mental Health Professional or Mediator, and the two lawyers. The professional team should be comprised of those professionals who collectively best meet the needs of the clients.

SECTION 4.02. MULTIDISCIPLINARY CONSIDERATIONS

The terms of the engagement for an allied professional in a Collaborative matter must be consistent with the rules of professional conduct governing the lawyer and the allied professional [See Chapter 9.02, Subtitle C. Temporary Enforceable Agreement.]

SECTION 4.03. DEFINING RESPONSIBILITY

The terms of engagement for the allied professional must be in writing and clearly define his or her scope of responsibility in the Collaborative matter, including such matters as attendance at meetings; communications with the lawyers, clients and children; and the relationship with other allied professionals who may be engaged in the matter.

CHAPTER 5

PROTECTING THE INTEGRITY OF THE COLLABORATIVE LAW PROCESS

SECTION 5.01. INTEGRITY OF THE PROCESS

The objective of Collaborative law is to achieve an ethical and enduring settlement for the clients. The Collaborative Lawyer should assist the client to develop alternatives for settlement that meet both the objectives of the client and the other party. The Collaborative Lawyer acknowledges that the client is responsible for the ultimate outcome of the Collaborative effort.

SECTION 5.02. HONESTY AND FULL DISCLOSURE

The Collaborative Lawyer recognizes that honesty and full disclosure of relevant information is critical to the successful outcome of a Collaborative matter and should therefore assist the client in complying with the requirement of full and candid exchange of all relevant or requested documents and information to the appropriate participants. It is the antithesis of litigation practice but the cornerstone of the safe environment that the Collaborative law process seeks to achieve. *Requested documents and information* are exactly what they sound like: If the documents and information are requested, they must be delivered or divulged. The clients may negotiate the manner and method of delivery. The appropriate minimum standard for disclosure should be thus posited: "Putting the shoe on the other foot, would my client need, expect or desire such information in attempting to make an informed decision?" The following definitions of "relevant" should guide the lawyer and client in disclosing the information: "having significant and demonstrable bearing on the matter at hand," "affording evidence tending to prove or disprove the matter at issue or under discussion," "having social relevance," and "implying a traceable, significant, logical connection." Phrased differently: Is the information appropriate for the occasion? Is the information so close to the matter at hand, that it cannot be ignored without a serious impact on the decision-making process?

SECTION 5.03. SWORN JOINT FINANCIAL STATEMENTS

In any divorce, sworn joint financial statements should be prepared describing the clients' assets and liabilities, unless it is waived in writing or the clients agree to prepare individual financial statements.

SECTION 5.04. FORMAL DISCOVERY BY AGREEMENT

If it is required to maintain a participant's confidence in the safety of the process, the Collaborative Lawyers and their clients may agree to engage in formal discovery procedures such as sworn affidavits, written interrogatories or depositions of clients. These procedures

should be used sparingly, and every effort should be made to create an environment in which the participants will feel secure and such formalities will be unnecessary.

SECTION 5.05. CORRECTION OF MISTAKES

The Collaborative Lawyer shall not take advantage of known mistakes, errors of fact or law, miscalculations, and other inconsistencies. The Collaborative Lawyer should disclose such errors and seek to have them corrected. Strict adherence to this provision is essential to the integrity of the clients' agreement and to Collaborative law, as an institution. This effort equates more than simply avoiding fraudulent and intentionally deceitful conduct. Misunderstandings should be corrected and not leveraged in the hope that they will benefit the client. The crucial consideration should be whether the lawyer or the client induced the misunderstanding or is aware that any other participant is relying on an assumption that is inaccurate.

SECTION 5.06. SAFE ENVIRONMENT

The Collaborative Lawyer should strive to provide a safe environment for the Collaborative matter that supports goal setting, data gathering, and agreement. The Collaborative Lawyer acknowledges that a safe environment necessarily involves the following principles:

1. Refrain from insistence on acceptance of conditions precedent to entering into the Collaborative law process;
6. Encourage creative problem-solving and discourage positional bargaining;
7. Speak directly with participants about any perceived non-collaborative behavior and attempt to remedy same in a constructive manner;
8. Accept critical feedback non-defensively and help to reframe criticism to become a constructive part of the process;
9. Exercise and model patience, active listening, and constructive dialogue at all times;
10. Avoid and discourage the use of pressure, threats or deadlines;
11. Acknowledge the process can only progress at the pace of the slowest participant;
12. Avoid offensive or provocative conduct, such as cross-examination, and promptly remind each other that such behavior is destructive to the process;
13. Avoid assessment of blame and use of judgmental language;
14. Avoid surprises such as undisclosed relationships, value of certain assets, etc.;
15. Adhere to agendas and establish realistic timelines;
16. Allow clients to set the timing of issues and agreements;
17. Avoid unilateral actions, facilitate team building and joint engagement of allied professionals throughout the process;

18. Urge participants to speak in a way that encourages others to listen and to listen in a way that encourages others to speak. Use language that encourages first-person speech (I feel, I believe, etc.) and avoid second-person speech (you know, you failed, you always, you never, etc.);
19. Train non-allied professional employees to be knowledgeable about these protocols;
20. Be mindful of power imbalances due to gender, control, culture, domestic violence, domination and coercive control, and other factors; and
21. Avoid unsolicited professional opinions in the joint meeting.

SECTION 5.07. CIVILITY AND PREPARATION

The Collaborative Lawyer should strive at all times to be courteous, punctual, and prepared for meetings. The Collaborative Lawyer should strive to schedule meetings free from outside distraction. It is suggested that time be scheduled before each Collaborative meeting for last-minute preparation and review of communication protocols with the client, and to meet with the other allied professionals to discuss any last-minute agenda items. Time should also be allocated immediately after each joint meeting for separate debriefings with the client and the other Collaborative Lawyer. Private space should always be made available for the guest lawyer and client for their pre-and post-meeting conferences.

SECTION 5.08. EFFICIENT COMMUNICATIONS

The Collaborative Lawyer should encourage efficient communications, especially by use of email and fax, among the clients, lawyers, paralegals, allied professionals, and other participants to schedule meetings, share documents, and relay procedural information (communication regarding sensitive issues should occur strictly via phone or face-to-face). The Collaborative Lawyer should promptly respond to any communication in a Collaborative matter. Late response deserves an explanation and, if necessary, an apology.

SECTION 5.09. PROTECTION OF A CHILD

A Collaborative Lawyer should not interview a minor child unless agreed to by all participants. If the child is being seen by a Mental Health Professional or a Child Specialist has been engaged, the interview should only be conducted with the approval of the Mental Health Professional or the Child Specialist. A child should not attend joint meetings, unless all participants, including the Mental Health Professional or the Child Specialist agree to the child's attendance. Unresolved issues of parental responsibility and parenting time may be referred to a jointly engaged Child Specialist.

SECTION 5.10. PROFESSIONAL FEES

The agenda for the first joint meeting should address payment of lawyers' fees.

When a decision is made to engage an allied professional or Special Issues Consultant, the payment of related fees should be addressed. At any subsequent meeting, the status of fees is a legitimate agenda item.

The Collaborative Lawyer acknowledges that any payment schedule of fees other than prompt payment according to employment contracts, results in an imbalance of power and an abuse of the process. Thus, the Collaborative Lawyer should encourage the client to take all actions required to pay promptly all professional fees according to employment contracts.

A Collaborative Lawyer's withdrawal from the matter or the termination or conclusion of the matter, does not preclude the lawyer or other allied professional retained in the process from collecting outstanding fees and testifying in support of their reasonableness.

CHAPTER 6 FUNDAMENTALS OF COLLABORATIVE LAW

SECTION 6.01. STAGES OF THE COLLABORATIVE LAW PROCESS

The Collaborative law process consists of five discrete stages:

1. Determining the clients' goals and interests;
22. Information gathering;
23. Development of settlement options;
24. Evaluation of the options; and
25. Negotiation of the settlement.

The Collaborative Lawyer prepares the client for each stage, helps the client communicate effectively with the other party throughout the process, and protects the integrity of the process by requiring the clients to proceed sequentially through the stages and resist the impulse to eliminate steps.

SECTION 6.02. DETERMINATION OF THE CLIENTS' GOALS AND INTERESTS

The first and most important stage of the Collaborative law process is defining the clients' goals and interests. The Collaborative Lawyer assists the clients to differentiate between their bargaining positions regarding settlement and their fundamental interests, to enable each party to recognize areas of commonality, and to understand and acknowledge the other party's interests. Collaborative law is premised on the concept of interest-based negotiation. A Collaborative Lawyer is skilled in exploring the clients' interests (their respective goals, needs, values, priorities, concerns, and fears) in order to understand why they desire any particular option. The fleshing out of interest leads to the recognition of common ground, as well as those matters that are of special significance to either party. This knowledge increases the likelihood of settlement and offer opportunities for creative trading and problem solving to assist the clients in achieving what they perceive as their best possible outcome.

SECTION 6.03. GATHERING INFORMATION

Gathering, organizing, and analyzing all relevant information is central to the Collaborative law process. The Collaborative Lawyers assist the clients in gathering documents, preparing spreadsheets, and locating and engaging appraisers, Financial Professionals, Mental Health Professionals, and other allied professionals or Special Issues Consultants whose assistance would facilitate the gathering, organization, and analysis of information related to the clients' property and the needs of their children.

SECTION 6.04. DEVELOPMENT OF SETTLEMENT OPTIONS

Upon completion of the exchange and organization of all relevant information, the clients should be encouraged to propose all possible options for settlement of the issues. The Collaborative Lawyer should assist the clients in developing options, with the understanding that any settlement option proffered for consideration is ultimately the client's responsibility. The Collaborative Lawyer should encourage "brainstorming" of all possible options, even those that seem improbable, to ensure that the choice the clients make is what they perceive as their best outcome. The Collaborative Lawyer must not participate in developing a settlement option that is false, misleading, contrary to public policy, or that, in the lawyer's opinion, would be abusive or neglectful of the children.

SECTION 6.05. EVALUATION OF OPTIONS

When the clients are satisfied that all possible options have been developed, the Collaborative Lawyers should assist the clients in evaluating the options, analyzing how the options meets the clients' goals, determining whether an option is realistically achievable, and considering whether the option would likely be approved by the court. Only if the participants agree that the exercise would be productive, in a joint meeting, they may compare any option with the possible result if the matter were to be litigated. Otherwise, such information is shared with the client **only**, in private consultation.

SECTION 6.06. NEGOTIATION OF SETTLEMENT

The focus of the final stage should be determining which options for settlement best serve both clients' interests and common goals. The ultimate goal of the process should be the achievement of what the clients perceive as the best possible outcome for them and their children. The clients, with assistance of the lawyers, should fashion the terms of the settlement, and the lawyers should encourage any settlement that will be approved by the court. Upon negotiation of the settlement, the lawyers shall promptly draft all of the necessary documents to finalize the matter.

SECTION 6.07. TECHNIQUES TO AVOID AN IMPASSE

- (a) A Collaborative Lawyer should not threaten to terminate the Collaborative matter and should advise the client to avoid similar threats. If there is a genuine likelihood of termination, the Collaborative Lawyer should advise the other lawyer of this prospect.
- (b) Before terminating the matter, the Collaborative Lawyers should explore deadlock-breaking techniques, including partial settlement, mediation, securing the opinion of

another lawyer, arbitration or referral to a special master for limited issues, a trip to the courthouse to view a trial, and an interview with a litigation lawyer.

SECTION 6.08. FUTURE ADVERSARIAL MATTERS

After conclusion of a Collaborative matter, whether by settlement or termination, a Collaborative Lawyer should not represent the client in any subsequent adversarial matter against the other party.

CHAPTER 7 MEETINGS

SECTION 7.01. THE IMPORTANCE OF MEETINGS

- (a) The Collaborative Lawyer acknowledges the importance of joint meetings to facilitate the Collaborative law process and to achieve a successful outcome. The Collaborative Lawyer should emphasize to the client the importance of attending all meetings and participating in good faith.

Although face-to-face meetings are preferred, circumstances may arise where other arrangements are necessary.

When a client refuses to attend joint meetings, a Collaborative Lawyer should seek an allied professional to assist the client in overcoming resistance. If that fails or the client is unable to attend meetings but desires to continue in the process, a Collaborative Lawyer should explore all viable alternatives to attending the meetings, including, without limitation: conference calls; video-or Internet-conferencing; joint meetings without the resistant client; joint meetings with allied professionals; the client's participation by speaker or by proxy; face-to-face meetings between the lawyers only; caucus style meetings where the lawyer(s) shuttle back and forth between separate meeting rooms; or meetings facilitated by a Mediator [See Sections 2.03-2.10. Subtitle B, for more information about meetings].

SECTION 7.02. TEAM MEETINGS

Team meetings should occur prior to the joint meetings, in order to set the agenda, and immediately after, to debrief. The lawyers generally walk their clients to the door after a joint meeting and then return to the room to commence debriefing with the other professionals.

SECTION 7.03. SCHEDULING AND ARRANGEMENTS

The Collaborative Lawyer acknowledges the need to meet regularly with clients and other professionals at mutually convenient times. A joint meeting should not be adjourned without scheduling at least one subsequent meeting (preferably two subsequent meetings, in case one of the joint meetings needs to be cancelled). Meetings should include provisions for:

1. Rotation of meeting sites unless the clients desire otherwise.

2. Seating arrangements that avoid a confrontational atmosphere. Ideally, clients sit on the same side of the table or the team uses a round table.
3. Private space for the guest lawyer and client to meet before, during, and after the joint meeting.
4. Advance preparation that includes distribution of sufficient copies of necessary documents for the meeting.
5. A hospitable venue for all participants that provides food, beverage, access to phones, fax, duplication, Internet, pens, paper, calculators and other helpful items.

CHAPTER 8 AGENDAS AND MINUTES

SECTION 8.01. AGENDA FOR MEETINGS

- (a) A written agenda should be prepared two days in advance of a joint meeting by the Communications Facilitator, Mediator, or neutral professional, in coordination with the Collaborative Lawyers and the Financial Professional. The agenda should govern each joint meeting.
 - i The lawyers should consult with their clients to make sure that all identified issues are included in the agenda. The clients should be encouraged to schedule agenda items in advance, through their lawyers. The agenda should provide specific information that allows the participants to sufficiently prepare for discussion of identified issues.
 - ii Matters that arise during a joint meeting that are not on the agenda should be deferred until the end of the meeting or placed on the next meeting's agenda, as participants agree. The Collaborative Lawyer should discourage clients from raising issues not on the agenda, to avoid the element of surprise.
 - iii A report on long-term homework assignments (not expected to be completed between any two meetings) should be included on the agenda, to encourage accountability.
 - iv Approval of the minutes should be an agenda item for each meeting.
 - v The agenda of the first joint meeting ordinarily should include the reading aloud of the Collaborative Law Participation Agreement by the clients and the team, as well as the signing of the agreement. The agenda for the first joint meeting should include the ascertainment of the clients' goals and interests and should be distributed in advance of the meeting. A restatement of goals and interests as the first agenda item in all subsequent meetings may serve to focus the clients.

SECTION 8.02. MINUTES

- (a) Minutes of joint meetings should be prepared and distributed within two business days after each meeting by the designated Collaborative Lawyer.

- i The minutes should reflect the essential issues and items that were discussed as well as, any agreements reached. Editorial bias should be avoided.
- ii The minutes should serve as a record of unfinished assignments and documents still needed.
- iii No minutes are kept during team meetings and hence, are not shared with clients.

CHAPTER 9 LEGAL DOCUMENTS AND PROCEEDINGS

SECTION 9.01. NOTICE TO COURT

Upon signing the Collaborative Law Participation Agreement, if a court proceeding is pending, notice should be sent to the court that the matter is being handled as a Collaborative matter, along with the appropriate document to dismiss the case.

SECTION 9.02. TEMPORARY ENFORCEABLE AGREEMENT

The Collaborative Lawyer recognizes there may be the need for temporary agreements enforced by a court. The standard Participation Agreement as recommended by the AKACP defines what language is necessary to create a temporary enforceable written agreement. An example of a Participation Agreement is posted to the alaskacollaborative.org/forms portion of the AKACP website. However, members are free to draft a different version of the participation agreement if they choose, as long as it incorporates the principles of collaborative practice.

CHAPTER 10 SPECIAL ISSUES CONSULTANTS

SECTION 10.01. JOINT ENGAGEMENT

Unless the clients agree otherwise, in a Collaborative matter, a Special Issues Consultant is to be retained jointly and in writing. Except as provided in section 10.02., any report and related work papers of the expert or advisor, including all documents submitted to the expert or advisor should be made equally available to the clients and the lawyers, whether the assistance was rendered for one or both clients.

SECTION 10.02. NEUTRALITY

The Collaborative Lawyer should inform the Special Issues Consultant or advisor that he or she is being engaged jointly and should use care to avoid the appearance of bias. The Special Issues Consultant should be instructed to disclose any potential reason that could cause a participant to question his or her impartiality. Scope and terms of the engagement should be in writing and signed by the participants and the Special Issues Consultant. The Special Issues Consultant should be instructed to be available for discussion with one or both clients.

SECTION 10.03. OTHER LEGAL OPINION

- (a) In a Collaborative matter, it may become advisable to secure an opinion from another lawyer for the benefit of one or both clients. The engagement of this lawyer should be disclosed before the first consultation.
- (b) If the opinion is only sought by one party, then the opinion given by such lawyer is not required to be disclosed to the other participants in the Collaborative law process, as such would be subject to the lawyer-client privilege.
- (c) Any lawyer offering an opinion should be given all information necessary to give informed advice, including the reports of the experts, advisors, and allied professionals whose services have been engaged in the Collaborative matter.
- (d) The lawyer should be privy to any information that a substitute Collaborative or a subsequent litigation lawyer would have in rendering opinions.
- (e) This section does not apply to a lawyer representing the client as co-counsel who signs the Participation Agreement.

SECTION 10.04. EFFECT OF OPINION OR FINDING

The opinion or finding of a Special Issues Consultant in a Collaborative matter is not binding on the clients, unless the clients agree in writing to be bound by such opinion or finding.

SECTION 10.05. TESTIMONY BARRED

Should the dispute become a litigated matter, the Special Issues Consultant may not testify, unless the clients and the Special Issues Consultant agree in writing to otherwise.

SECTION 10.06. SURVEILLANCE

Neither the Collaborative Lawyer nor the client may directly or indirectly conduct surveillance or research into the other party's activities during the Collaborative matter. This prohibition extends to allowing the use of an investigator, detective, or other individual paid for or engaged by a third party.

CHAPTER 11 SETTLEMENT DOCUMENTS AND CLOSING

SECTION 11.01. GOOD FAITH DRAFTING

- (a) A Collaborative Lawyer should, in good faith, draft settlement documents and final court orders in a manner that honestly and completely reflects the clients' intentions.
- (b) A Collaborative Lawyer should not take advantage of a drafting mistake and should promptly notify the other lawyer of the mistake.

SECTION 11.02. CLOSING

- (a) If feasible, the signing of the closing documents should be done in a joint meeting. Any remaining issues between the clients should be resolved at this time.

- (b) The clients should be encouraged to plan a final meeting that meets their needs.
- (c) The clients should discuss with their counsel how their agreement will be presented to the court for approval and if it will be filed jointly as co-petitioners in an uncontested action or as separate clients with a Complaint or other document initiating court approval. In that event, it is recommended that the responding client submit the final settlement documents and inform the court that the clients have resolved all issues.
- (d) The lawyers should cooperate to schedule a hearing or submit any additional documents necessary for court approval of the settlement document as soon as possible.

CHAPTER 12 WITHDRAWAL AND TERMINATION

SECTION 12.01. WITHDRAWAL

A Collaborative Lawyer, subject to the terms of engagement, may withdraw from a Collaborative matter as in any other matter. The Collaborative Lawyer should assist the successor Collaborative Lawyer in becoming familiar with the matter.

SECTION 12.02. SUCCEEDING ANOTHER COLLABORATIVE LAWYER

A Collaborative Lawyer who is succeeding another Collaborative Lawyer is expected to sign the Collaborative Law Participation Agreement. If this is not promptly done, the other party may terminate the Collaborative matter.

SECTION 12.03. TERMINATION OF THE PROCESS

A Collaborative Lawyer should explain to the client that the Collaborative law process is voluntary and may be terminated by the client at any time and for any reason.

A Collaborative Lawyer should seek to obtain authority in the employment agreement or Participation Agreement to terminate the Collaborative law process on behalf of the client, without giving a reason, if the lawyer discovers that the client has violated or proposes to violate the Collaborative Law Participation Agreement in a manner that would compromise the integrity of the process.

SECTION 12.04. TRANSITION TO A LITIGATION LAWYER

The Collaborative Lawyer should assist the litigation lawyer in becoming familiar with the matter. However, confidentiality provisions in the Participation Agreement bind the Collaborative Lawyer.

The litigation lawyer may not be a lawyer in the same firm as the Collaborative Lawyer.

The Collaborative Lawyer should cease further work on the matter once the litigation lawyer has accepted the matter.

A Collaborative Lawyer approached to give an opinion in a Collaborative matter in which he or she is not involved should do so only after confirming that the other party has been

given notice that the opinion has been sought. Unless the clients agree in writing to the contrary, any lawyer who has been jointly engaged to give an opinion to both clients, may not serve as the litigation lawyer for either party.

CHAPTER 13 MISCELLANEOUS PROVISIONS

SECTION 13.01. INTERPRETATION

The advancement of the highest and noblest goals of furthering Collaborative law as a preferred process of resolving family law matters should guide the interpretation of these protocols.

SUBTITLE D

**PROTOCOLS OF PRACTICE FOR MENTAL HEALTH
PROFESSIONALS INVOLVED IN COLLABORATIVE FAMILY LAW**

MISSION STATEMENT: PHILOSOPHY OF PRACTICE

Collaborative law offers enlightened approaches to families in transition. Mental Health Professionals, by virtue of their training, knowledge, experience, and outlook are uniquely suited to provide critical contributions to the success of Collaborative law cases.

As a new frontier for Mental Health Professionals, Collaborative law carries hopes, opportunities, and hazards. The risks and uncertainty of navigating in uncharted territory temper the lure and excitement of new forums for seasoned skills. Without sufficient direction and tools, early enthusiasm for pioneering ventures often gives way to insecurity, ambiguity, inertia, and resistance to change. This document is tendered with the hope that it will provide a structure to reduce such risks and maximize the benefits of the contributions of Mental Health Professionals to the Collaborative law process.

Protocols in an evolving field of practice carry their own risks. This document is not an attempt to prematurely standardize the manner in which Mental Health Professionals participate in the Collaborative process. This could diminish the opportunity and incentive for innovation and for creative adaptations to unique circumstances. Instead, we have sketched a rudimentary map and included some tools to ease the journey into unfamiliar territory. We do not claim to have identified all the best routes or to have captured the complexity of the terrain. But we have drawn on carefully developed principles that have stood the test of time and represent the accumulated wisdom of our professions.

The protocols that follow are designed to respond to issues that are likely to arise when Mental Health Professionals become involved in Collaborative law cases. We attempt to define some parameters of such involvement. These include the backgrounds that prepare professionals for this type of work, some general practices and procedures that have proved valuable, and the Mental Health Professional's role when the Collaborative process has ended either with or without successful resolution of disputes. Where applicable, the protocols incorporate, as aspirational guidelines, relevant ethical precepts that have evolved in our respective professions.

It bears repeating that the ideas and experience reflected in these protocols are not intended to replace the creativity of the individual clinician or to channel all practitioners into an identical mold. Rather, our expectation is that this document will serve as a guidepost inviting refinements, corrections, new directions, excisions, and leaps forward. When addressing issues about which disagreement can be expected, rather than advocate for a particular model of practice, we present various alternatives. Such an approach provides the type of open-ended guidance that allows for revision in the light of future experience and research.

If this manual serves as a reference providing general direction while accommodating many pathways to practice, if it makes the venture into Collaborative law less of a daunting challenge and more of an exciting journey, then it will have accomplished its mission.

CHAPTER 1 GENERAL PROVISIONS

SECTION 1.01. APPLICATION OF THE PROTOCOLS

The Alaska Association of Collaborative Law Professionals intends for these protocols to be used voluntarily by Mental Health Professionals involved in the Collaborative process as aspirations to practice. These protocols are subordinate to the rules of professional conduct governing each mental health discipline.

CHAPTER 2 ROLES OF MENTAL HEALTH PROFESSIONALS AND MODELS OF PRACTICE

INTRODUCTION

Some of the benefits, for which Collaborative teams may engage a Mental Health Professional to help family members resolve divorce issues include: communications training, negotiation skills, improved parenting, management of difficult emotions, and psychological assessment. In a traditional adversarial divorce, spouses may battle over win/lose demands and positions in their marital estates. Capable lawyers may counsel their clients further by exploring the clients' interests in settlement conferences or in mediation.

In contrast, Collaborative law helps a divorcing couple to cooperatively address their interests in their marital estates. But, “in addition they commit to preserve and value a third estate owned by the parties and their family: the invisible or *relational estate*.” (Tesler, Pauline H., *Collaborative Law: Achieving Effective Resolution in Divorce without Litigation, Second Edition, pgs. 80-81*, Chicago: American Bar Association Publishing, 2008). To paraphrase Tesler, this estate includes: family relationships, shared friendships, the spouses' co-parenting relationship, and the maintenance of self-respect and dignity in their post-divorce relationship. More often than not, the family's relational estate issues, particularly in the throes of a divorce, color the positions spouses present to their lawyers and prevent the spouses from adequately addressing their true interests.

The Collaborative law process is problem-solving intensive, while helping the spouses address the interests of their two estates. The spouses' abilities to problem solve their interests are vital. A breakdown or deficit in communication or negotiation skills in either spouse or either lawyer will quickly frustrate the Collaborative law process. In addition, a lack of essential information—for example, a child's special needs or the extent of a parent's disability—may impede effective problem solving.

But, the Collaborative law process is also relationally intensive. The relational estate is particularly strained during a separation and divorce. In most instances, the decision to divorce is not mutually agreed upon. Typically, one spouse wants to leave the marriage while the other wants the marriage to continue. Consequently, the spouses are likely to be at different places emotionally during the separation, and neither is satisfied with how the other defines the relationship. And, the

greater the difficulty either spouse may have managing the conflicting feelings of love, anger, and sadness, the more intense the post-separation conflict may become.

The lawyer-client relationship is also part of the Collaborative law relational mix. The client may have questions about whether the Collaborative law process is appropriate. Or the client may believe the lawyer is not assertive enough with the other lawyer or that the lawyer does not adequately articulate the client's interests. The client may also come to believe that the lawyer cannot adequately manage the other spouse, raising issues of trust during the vital problem-solving meetings.

Clearly, there is much unsaid during the joint meetings between spouses and their lawyers, and much that may go unrecognized until the spouses reach an impasse over an issue that touches a sensitive emotional nerve. Then, the Collaborative law process may capsize. At such times, a Mental Health Professional on a Collaborative law team may be a valuable lifeline if the spouses founder on the shoals of either of the two estates. A Mental Health Professional may also help the spouses and their lawyers anticipate problems that arise from problem solving or relational issues.

How does the Mental Health Professional fit on the Collaborative law team? Practically, Collaborative law proponents have offered several models for mental health input and consultation. Some of those models will be described in this chapter. All have proven useful to Collaborative law practitioners. The goal of Collaborative law is to help a couple obtain a divorce in a context that promotes the values of respect and cooperation. Collaborative law principles, reflected in these differing models, advance these values.

SECTION 2.01. MENTAL HEALTH PROFESSIONAL ROLES

Mental Health Professionals undertake three primary roles in the Collaborative process: Communications Facilitator, Child Specialist, and Special Issues Consultant.

SECTION 2.02. COMMUNICATIONS FACILITATOR.

As a Communications Facilitator, Mental Health Professionals participate in the following ways.

Help the participants:

Identify, formulate, and prioritize goals;

Identify shared goals; and

Stay goal oriented and goal accountable.

Maximize effective communication by modeling, teaching and encouraging the participants to:

Use conflict resolution skills;

Use active listening skills;

Be respectful;

Identify and communicate personal interests;

Recognize and respect the interests of the other participants;

Identify conflicting interests;

Defuse high conflict issues;

Manage irreconcilable tensions; and

Normalize thinking and emotions.

Assist the participants in negotiating by modeling teaching, and encouraging participants to:

Identify interests;

Explore options for decision-making;

Search for external standards of legitimacy to evaluate options;

Identify the best alternative to an agreement;

Maintain two-way communication;

Build good working relationships;

Encourage the participants to explore future issues to ensure effectiveness of current decision-making;

Make clear, careful commitments at the end of the process.

The Mental Health Professional is strongly encouraged to focus on communication dynamics particularly when:

The clients' relationship history includes family violence;

The clients' interaction pattern is characterized by heightened negative emotions, particularly around parenting and financial issues;

One or more of the clients have a history (lengthy or otherwise) of psychopathology or mood disorder;

One or more of the clients have a history of substance abuse;

A significant discrepancy exists between the clients' respective negotiating skills;

One consequence of divorce, or other family matters, is that the standard of living of one or more clients will significantly change; and

The clients' particular interpersonal dynamics may impede the Collaborative process.

SECTION 2.03. CHILD SPECIALIST

As a Child Specialist, Mental Health Professionals participate in the following ways.

Assist parents and the other participants to:

Assess the emotional, social, academic, and parenting needs of the children; and

Identify the risks and concerns associated with those needs.

Encourage the participants to:

Remain focused on the needs of the children;

Identify the changing developmental and emotional needs of the children;

Identify the children's specific risks and concerns;

Identify common parenting goals;

Identify differences in parenting styles and manage the resulting tensions;

Develop co-parenting skills; and

Understand the impact of their decisions on the children.

Guide the participants to a parenting plan that:

Meets the needs of the children;

Satisfies the parents' respective parenting interests and goals;

Optimizes the relative contribution of each parent to the development and experience of children;

Provides satisfactory accommodations for parenting differences;

Provides necessary safeguards; and

Anticipates future concerns, and developmental and emotional issues.

Assist the children, in consultation with the child's therapist, in any/all of the following ways:

Identify their core issues, needs, wants, and hopes;

Communicate their wishes and concerns;

Provide them with an opportunity to ask and receive appropriate answers to their questions;

Offer them comfort, support, and safety;

Recognize and cope with their thoughts and feelings;

Maintain optimal relationships with both parents; and

Help them avoid unhealthy alliances with either parent.

Collaborative teams are strongly encouraged to include a Child Specialist particularly when:

- A child has a significant learning disability, medical issue, developmental disability or mental health or emotional concern;
- One or both parents have a significant medical or psychological problem, such as a chronic debilitating illness or substance abuse problem or mood disorder, that is likely to affect parental functioning;
- One or both parents are considering relocation;
- One or both parents are introducing a new member into the family constellation that creates blended family issues;
- A history of child abuse is present;
- The parents have widely varying parenting philosophies;
- The parents have strong disagreements about the children's school placement, participation in extracurricular activities, religious education, or access to extended family members;
- The developmental and emotional needs of the children require a unique parenting plan;
- The family includes children varying widely in age;
- A parent who has been relatively peripheral in the lives of the children is anticipating becoming more involved;
- A full-time parent is anticipating having to go to work, thereby significantly reducing their parenting time;
- The parents want to consider special parenting schedules to accommodate unique circumstances (e.g. to accommodate the work schedules of a firefighter, slope-worker or military family, etc.); and
- The family has experienced other recent significant losses, such as the death of a grandparent or a geographic move.

SECTION 2.04. SPECIAL ISSUES CONSULTANT

If there are some unique issues that require a neutral opinion, a Special Issues Consultant can be engaged. As a Special Issues Consultant, Mental Health Professionals provide consultation for a specific and narrowly defined issue such as scholastic placement, out of state residence, competency or substance abuse treatment. The Special Issues Consultant may conduct needed assessments and convey a professional opinion/recommendation as to the best option(s) to resolve the issue. (The term *Special Issues Consultant* currently is in wide use and is intended to distinguish from an expert who is hired by one side in a litigated dispute. In a Collaborative process, though, Mental Health Professionals are expected to be neutral, regardless of their specific roles).

SECTION 2.05. MODEL OF PRACTICE

Collaborative participants in Alaska are in a continuous process of defining their roles and employing varied models of practice. Varying models of practice are also used throughout the international Collaborative community.

Mental Health Professionals are most effective when they are part of the team from the outset of the Collaborative process, consulting with the other professionals on the team prior to the first joint meeting. The model supported by the Mental Health Professionals in Alaska involves filling the role of the Communications Facilitator for both clients.

SECTION 2.06. ADDITIONAL ROLES

Potential roles for Mental Health Professionals include:

Program evaluator. Many Mental Health Professionals have training in research method and program evaluation. Evaluating the effectiveness of Collaborative law practices may broaden practitioners' understanding of effective approaches.

Negotiation trainer. Couples going through a Collaborative divorce benefit from increased knowledge about and skills of negotiating. In an educational model, Mental Health Professionals train couples to use the basic elements of negotiation before the start of joint meetings.

Arbitrator. In rare instances, Collaborative participants may agree to have a Mental Health Professional arbitrate narrowly defined issues such as choosing a school, inpatient program or therapist.

Parenting plan evaluator. There may be instances when a Collaborative team decides to employ a Mental Health Professional as a Special Issues Consultant to conduct a formal evaluation and make recommendations regarding a parenting plan.

CHAPTER 3 ENGAGEMENT CONSIDERATIONS

SECTION 3.01. SUITABILITY FOR COLLABORATIVE ENGAGEMENT

The Mental Health Professional should be aware that certain matters might be inappropriate for the Collaborative process and should exercise prudent judgment in accepting or declining a Collaborative engagement.

Appropriate engagements are those in which (1) the Mental Health Professional is able to be neutral, (2) clients' and lawyers' objectives are consistent with the principles of Collaborative law, and (3) there is no indication of dishonesty of purpose or fraud. Prior to accepting the engagement, a Mental Health Professional should inquire as to whether any other Mental Health Professional has been engaged to fill the same role in the case.

- (a) A Mental Health Professional should decline to be involved in a Collaborative engagement when they become aware of a client or lawyer seeking to use the Collaborative process to gain an advantage, regardless of magnitude or materiality e.g. furthering a position to prepare for litigation.

- (b) Positioning, disregarding a party's input, or acting in a biased manner is conduct that is inconsistent with these protocols and is contrary to the spirit of the Collaborative process.
- (c) The Mental Health Professional should carefully assess matters for untreated mental health issues, addictions, and family violence to determine whether the Mental Health Professional is willing and able to handle the matter.
- (d) Collaborative law is not to be used as a subterfuge by clients with ulterior motives.
- (e) The Mental Health Professional acknowledges that choosing Collaborative law as a dispute resolution process is the clients' prerogative.
- (f) Should a Mental Health Professional be confronted with a client or lawyer who wishes to exploit the Collaborative law process, the Mental Health Professional should assess:
 - i Whether the Mental Health Professional, with or without the assistance of other members of the Collaborative law team, can overcome the barriers to the honest application of the Collaborative law process;
 - ii Whether the Mental Health Professional possesses the requisite skills to overcome the barriers in a reasonable timeframe and within the Collaborative spirit; and
 - iii Whether there are adequate resources (such as other allied professionals) available to supplement the Mental Health Professional's expertise.
- (g) When the Mental Health Professional becomes unable to adequately perform his or her duties during an engagement, he or she shall consider referral to another Mental Health Professional and follow the steps prescribed herein [See Section 6.12, Subtitle D. Withdrawal and Termination.]

SECTION 3.02. TERMS OF ENGAGEMENT

The terms of the engagement of a Mental Health Professional should be consistent with these protocols and the protocols of practice for Collaborative Lawyers. The Mental Health Professional becomes engaged in a Collaborative case through a written agreement with the Mental Health Professional, the clients, and their lawyers. The written agreement, called the Neutral Allied Mental Health Professional Participation Agreement, clearly defines the objectives and scope of the Mental Health Professional's involvement in the Collaborative law process.

SECTION 3.03. DISCLOSURE

Before accepting a Collaborative engagement, the Mental Health Professional should disclose the nature and extent of any past or present business, personal or professional relationships with the other participants. Disclosure is intended to provide an opportunity for the participants to evaluate any potential impact of these relationships on the Mental Health Professional's perceived neutrality and whether to engage the Mental Health Professional. In the event a Mental Health Professional has a prior or on-going therapeutic relationship with one or both members of the couple, he/she will not accept a Collaborative role.

SECTION 3.04. OBJECTIVES

The Mental Health Professional's objectives are to assist the participants in recognizing the clients' interests, goals, and expectations and maximize their functioning in order to achieve what they perceive as the best possible outcome, under the circumstances.

SECTION 3.05. SCOPE

The clients and members of the Collaborative team define the scope of the Mental Health Professional's engagement. If, during the course of the Collaborative process, a client or member of the Collaborative team asks the Mental Health Professional to perform services outside the scope of the engagement, the Mental Health Professional should communicate this request to the rest of the team. The Mental Health Professional should not perform any services outside the scope of the original engagement without prior written consent by the clients and the Collaborative team.

SECTION 3.06. PAYMENT OF FEES

The Mental Health Professional and the participants should designate in the Participation Agreement the person(s) responsible for the Mental Health Professional's fees. Mental Health Professionals in Collaborative cases work on a retainer basis, not on a *fee for services* basis. If one participant is paying all or a substantial portion of the fees, the other participants should be informed. When this occurs, it is important for the Mental Health Professional to gain the others' agreement to this inequity of fee payment. Payment by one participant can lead to an appearance of bias.

Further, the Mental Health Professional should be kept current on fees during the course of the Collaborative matter to avoid any perception that a buildup of unpaid fees is impairing the Mental Health Professional's objectivity. In accordance with local practice, all team members will keep each other updated on the status of their retainers and communicate this clearly to the clients. Fees are a valid topic to include on a meeting agenda.

SECTION 3.07. LEGAL ADVICE

The Mental Health Professional should not provide legal advice.

CHAPTER 4 RELATIONSHIP OF MENTAL HEALTH PROFESSIONALS AND OTHER ALLIED PROFESSIONALS TO CLIENTS

SECTION 4.01. INTRODUCTION

Mental Health Professionals engage in a Collaborative law matter to serve the interests of the clients in an impartial, unbiased, and independent manner. The Mental Health Professional recognizes that the participants' perception of the Mental Health Professional's impartiality is largely influenced by the nature of the Mental Health Professional's communications with the participants.

SECTION 4.02. TEAM CONCEPT

Clients engage the Mental Health Professional with the advice and input from their lawyers. The Mental Health Professionals are a part of the Collaborative team, working with the other participants to achieve mutual agreements. It is essential that each team member be informed of sensitive issues-including financial and psychological issues - that might complicate an agreement.

At times, it is useful for all members of the team to have information about mental health to enable them to facilitate the Collaborative law process. The Mental Health Professional should anticipate areas of emotional concern and work with the other Collaborative professionals to allow time to address such issues.

SECTION 4.03. COMMUNICATIONS

Initial communications with the participants will establish the perceptions of the Mental Health Professional's objectivity and neutrality. Mental Health Professionals should strive to maintain effective working relationships with the participants by avoiding the perception of bias.

Specific facts and circumstances of a case may require more interaction with one participant than another. When this occurs, it is important for the Mental Health Professional to gain the others' agreement to this inequality of time. Perceived excessive interactions with one participant can lead to an appearance of bias.

Mental Health Professionals should provide copies of all written communications generated to all participants, except when disclosure would be counterproductive to the Collaborative process.

When a client shares information with the Mental Health Professional outside the presence of the other members of the team or the other client, the Mental Health Professional should make clear that the information will be shared with the other members of the team regardless of the client's request to the contrary. In this way, the team can consider whether the information will assist the Collaborative process and how it should be addressed.

If the other participants agree, the Mental Health Professional may communicate directly with other allied professionals when it is helpful in achieving the clients' goals.

The Mental Health Professional should ask for the involvement of another Mental Health Professional or a Financial Professional when the Mental Health Professional deems it helpful to furthering the Collaborative law process.

CHAPTER 5 PROTECTING THE COLLABORATIVE PROCESS

SECTION 5.01. INTEGRITY OF PROCESS

The Collaborative law process aims to achieve an ethical and enduring settlement for the clients. The Mental Health Professional assists the participants within the scope of the engagement by furthering the participants' knowledge and information. The Mental Health Professional recognizes that this knowledge and information may significantly influence the outcome. The Mental Health Professional strives to provide accurate, unbiased information in a format that is understandable and available to all participants.

SECTION 5.02. HONESTY AND FULL DISCLOSURE BY THE PARTICIPANTS

The Mental Health Professional recognizes that the clients' honest and full disclosure of relevant information is critical to a successful outcome. The Mental Health Professional should assist clients in complying with the requirement to make full and candid exchange of all relevant and requested documents and information. The Mental Health Professional should inform the clients that information given to the Mental Health Professional will be made available to all members of the Collaborative team.

Should a Mental Health Professional discover information known to only one client that is contrary to other information provided or the position taken by one of the clients, the Mental Health Professional should provide an opportunity for further disclosure without making either client uncomfortable. If the client does not embrace full disclosure, the Mental Health Professional will first seek assistance from that client's attorney before bringing it to the attention of the team to avoid derailing the Collaborative process. It is essential that the Mental Health Professional's perceived and actual neutrality be preserved.

SECTION 5.03. CORRECTING MISTAKES

The Mental Health Professional, through faulty information or human error, may create a false impression or provide inaccurate information. The Mental Health Professional should disclose and correct the error when it is discovered.

SECTION 5.04. SAFE ENVIRONMENT

The Mental Health Professional should strive to provide a safe environment for the Collaborative matter that supports goal setting, data gathering, and agreement. The Mental Health Professional acknowledges that a safe environment necessarily involves the following principles:

1. Refrain from insistence on acceptance of conditions precedent to entering into the Collaborative law process;
2. Encourage creative problem-solving and discourage positional bargaining;
3. Speak directly with participants about any perceived non-collaborative behavior and attempt to remedy same in a constructive manner;
4. Accept critical feedback non-defensively and help to reframe criticism to become a constructive part of the process;
5. Exercise and model patience, active listening, and constructive dialogue at all times;

6. Avoid and discourage the use of pressure, threats or deadlines;
7. Acknowledge the process can only progress at the pace of the slowest participant;
8. Avoid offensive or provocative conduct and promptly remind each other that such behavior is destructive to the process;
9. Avoid assessment of blame and use of judgmental language;
10. Avoid surprises such as undisclosed relationships, value of certain assets, etc.;
11. Adhere to agendas and establish realistic timelines;
12. Allow clients to set the timing of issues and agreements;
13. Avoid unilateral actions, facilitate team building and joint engagement of allied professionals throughout the process;
14. Urge participants to speak in a way that encourages others to listen and to listen in a way that encourages others to speak. Use language that encourages first-person speech (I feel, I believe, etc.) and avoid second-person speech (you know, you failed, you always, you never, etc.);
15. Train non-allied professional employees to be knowledgeable about these protocols;
16. Be mindful of power imbalances due to gender, control, culture, domestic violence, domination and coercive control, and other factors; and
17. Avoid unsolicited professional opinions in the joint meeting.

CHAPTER 6

PRACTICE GUIDELINES FOR MENTAL HEALTH PROFESSIONALS INVOLVED IN COLLABORATIVE LAW

INTRODUCTION

The following guidelines have three purposes:

- (a) First, they provide initial direction to those Mental Health Professionals participating in the Collaborative law process.
- (b) Second, as mentioned at the beginning of this section, they are intended to provide an aspirational model of desirable professional practice and to improve the quality of services by Mental Health Professionals. They should not be considered as practice standards. The guidelines are specifically intended to be general in nature as this area of practice is new and evolving.

- (c) Third, these guidelines are intended to serve an educational purpose; they are intended to alert Mental Health Professionals to some of the issues they may need to consider when working in this area.

SECTION 6.01. AVOIDING HARM

Mental Health Professionals take reasonable steps to avoid harming participants and others with whom they work.

SECTION 6.02. COMPETENCE

Mental Health Professionals provide services within the boundaries of their competence, based upon their education, training, supervised experience, consultation, study, and/or professional experience.

SECTION 6.03. QUALIFICATIONS

Mental Health Professionals are licensed or working under the supervision of a collaboratively trained, licensed Mental Health Professional and are familiar with the relevant ethical standards and state regulations of their profession.

SECTION 6.04. CREDENTIALS, EDUCATION, AND TRAINING

Mental Health Professionals who wish to work in Collaborative law have received relevant education, training, supervised experience, consultation, and/or study regarding family law matters.

- (a) Mental Health Professionals maintain state licensure as a psychological associate, marriage and family therapist, professional counselor, psychiatrist, psychologist or clinical social worker.
- (b) Mental Health Professionals receive training in Collaborative family law, preferably with an emphasis upon interdisciplinary teams, and have a working knowledge of interest-based negotiation principles rooted in training from at least one of the following: negotiation, mediation, alternate dispute resolution or Collaborative family law.

SECTION 6.05. CONTINUING EDUCATION

- (a) When Mental Health Professionals begin to practice in new and emerging areas such as Collaborative law, they undertake relevant education, training, supervised experience, consultation, and/or study.
- (b) Mental Health Professionals shall comply with the continuing education requirements established by AKACP.

SECTION 6.06. NATURE OF MENTAL HEALTH PROFESSIONALS' RELATIONSHIPS

Collaborative law is a complex and evolving process and Mental Health Professionals' professional relationships may vary across situations. Mental Health Professionals strive to clarify with clients, Collaborative Lawyers and other Collaborative professionals the nature of the relationship they will have with each.

SECTION 6.07. NEUTRALITY

- (a) When working with participant(s), Mental Health Professionals strive to maintain neutrality.
- (b) Mental Health Professionals strive to promote the shared interests of all participants.

SECTION 6.08. INFORMED CONSENT

Informed consent is based upon respect for a participant's autonomous decision making. Informed consent requires that participants engage in the Collaborative law process voluntarily and that they are mentally competent to do so.

- (a) Mental Health Professionals make reasonable efforts to disclose all relevant information regarding their role to participants. Relevant information generally includes: a review of the participants' alternatives about how to involve Mental Health Professionals, the advantages and disadvantages of each, and the Mental Health Professional's recommendations, where appropriate.
- (b) Mental Health Professionals strive to allow participants sufficient time to consider their alternatives and to ask questions before consenting to the Collaborative law process.
- (c) When participants decide that a Mental Health Professional will play a role as a Special Issues Consultant in the Collaborative law process, such agreements are made in writing.

SECTION 6.09. CONFIDENTIALITY

Information disclosed in the presence of a third party is not considered confidential. Confidentiality is addressed by the Collaborative Lawyers in consultation with their Collaborative clients and appropriate agreements are made regarding management of personal information.

- (a) Mental Health Professionals strive to clarify with the other participants the confidentiality agreements under which their involvement will take place.
- (a) Mental Health Professionals review such information with the participants, including how and under what circumstances information will be shared with the other members of the team.
- (b) The Mental Health Professional may come into possession of undisclosed information held by one client that could materially affect the interests of the clients or the outcome of the case. The Mental Health Professional will first encourage the client to either make the disclosure or consult with their attorney about the matter. If the client will not agree to either course, the Mental Health Professional will directly advise the client's attorney—without disclosing the information—that the client is withholding critical

information that threatens the integrity of the Collaborative process. If no disclosure is forthcoming, the Mental Health Professional must withdraw rather than participate, knowing the relevant and significant, but undisclosed information. If the participant then discloses the matter to the other team members, the Mental Health Professional may once again participate in the process with the participants' consent.

Note: A major paradigm shift for a Mental Health Professional handling a Collaborative matter is the requirement for disclosure of information. It may conflict with other duties of the Mental Health Professional, including the avoidance of emotional harm to one's clients, yet such transparency is the cornerstone of the safe environment that the Collaborative law process strives to achieve.

- (w) Mental Health Professionals consult with the Collaborative Lawyers regarding a particular matter when they are uncertain whether or not obtained information might materially affect the outcome of the Collaborative law matter.
- (x) In the event that the clients terminate the Collaborative process and initiate litigation, all clinical documentation, records, intakes or paperwork associated with these sessions are strictly off limits to the clients, their attorneys or representatives. These records and documents shall not be considered discoverable for evidentiary purposes in regard to any custody or other litigation involving either or both clients. Both clients agree to not use a records deposition or subpoena or other means to gain access to any documentation of these sessions.
- (y) The Mental Health Professional shall not be subject to subpoena, deposition or testimony, nor be called upon in any way to provide for either party testimony or information about the clients or their work in the Collaborative process.

SECTION 6.10. MULTIPLE RELATIONSHIPS

Multiple relationships exist when Mental Health Professionals participate in two or more role categories with participants, concurrently and/or sequentially. Multiple relationships may or may not be harmful. Harmful multiple relationships arise when Mental Health Professionals find themselves in situations of conflict of interest and/or where their objectivity may be compromised.

- (a) Mental Health Professionals strive to avoid entering into multiple relationships when such relationships have the potential to harm participants and/or impair the Mental Health Professional's objectivity or judgment.
- (a) Mental Health Professionals who have a prior relationship with prospective participants and/or their children do not participate as allied professionals in the Collaborative law process.
- (b) When Mental Health Professionals agree to enter into dual or multiple roles, they inform all the participants of their decision and obtain informed consent regarding the advantages and disadvantages of doing so. Adequate time is allowed for thoughtful decision making before proceeding.
- (c) Despite one's best effort to avoid multiple relationships, they may arise nonetheless. If they do, Mental Health Professionals make known the potential conflict to the

participants and where relevant, the Collaborative Lawyers, and take reasonable steps to resolve it.

- (d) In some situations, Mental Health Professionals may be asked to engage in sequential roles with participants during the Collaborative law process. Such roles are not unethical; however, they are contemplated carefully in an effort to avoid harm.
- (e) When a shift in roles is considered, Mental Health Professionals inform all participants of the suggested change and obtain informed consent regarding the advantages and disadvantages of doing so. Adequate time is allowed for thoughtful decision making before proceeding.

SECTION 6.11. RECORDKEEPING

Mental Health Professionals keep records of their professional activities consistent with their professional codes of ethics and relevant law. Generally, such records include but are not limited to: documents regarding their engagement including fee agreements, dates of service, participants served, significant actions taken, and payment records.

Mental Health Professionals advise clients that, in Collaborative law, their records are treated as one matter. As such, information about both clients is maintained in the same file. Disclosure of information beyond members of the team requires a release of information signed by both clients. For example, a party may be referred to a therapist. Information provided to the individual therapist by the team needs to be accompanied by a release of information signed by both clients.

SECTION 6.12. WITHDRAWAL AND TERMINATION

Any member of the Collaborative process may withdraw from the process for a variety of personal or professional reasons.

- (a) Participants have a right to withdraw from the Collaborative law process. Mental Health Professionals take reasonable steps to anticipate this possibility.
- (a) The Mental Health Professional may come into possession of undisclosed information held by one client that could materially affect the interests of the clients or the outcome of the case. The Mental Health Professional must make reasonable efforts to get the client to disclose. If no disclosure is forthcoming, the Mental Health Professional must withdraw rather than participate, knowing the relevant and significant, but undisclosed information. If the participant then discloses the matter to the other team members, the Mental Health Professional may once again participate in the process with the participants' consent.
- (b) The role of Mental Health Professionals ends with the successful completion of the Collaborative law process or termination. If a client wishes to terminate a professional, this shall be discussed with the team to determine whether the case can successfully go forward and conclude with a new team member. The team has an obligation to the integrity of the process. The team professionals need to explain this to the client.

- (c) In some cases, the Mental Health Professional may be available to the clients at a future date, should they choose to resolve a new issue related to the relationship. In such cases, if at all possible, the Mental Health Professional will, as a matter of courtesy, inform members of the former Collaborative team.
- (d) Mental Health Professionals terminate their professional relationships with participants when it becomes apparent that the participants no longer need services, are not benefiting or are being harmed by continued service.

SECTION 6.13. SEEKING CONSULTATION

When ethical dilemmas arise, Mental Health Professionals are encouraged to consult the ethics codes and laws that govern their respective professions as well as other collaboratively trained Mental Health Professionals.

CHAPTER 7 CONTINUED INVOLVEMENT WITH THE FAMILY AFTER THE COLLABORATIVE PROCESS ENDS

INTRODUCTION

This chapter offers practice guidelines if the participants ask the Mental Health Professional to assume an ongoing role after the Collaborative process ends with a conclusion by agreement or termination without agreement. A MHP might be asked to provide on-going services in two likely circumstances: 1) post-agreement services built into the framework of the agreement reached in the Collaborative process and 2) unanticipated post-agreement services that occur some period of time after the agreement was implemented or the Collaborative process was terminated without an agreement.

SECTION 7.01. MAINTAINING THE INTEGRITY OF THE COLLABORATIVE PROCESS

The Mental Health Professional has a responsibility to protect the integrity of the Collaborative process at all times. The duty to do so starts with the first communication to the Mental Health Professional, is continuous, and does not end with the conclusion or termination of the Collaborative process. The duty of the Mental Health Professional to protect the integrity of the process includes:

- (a) Setting and maintaining boundaries;
- (b) Defining and clarifying expectations; and
- (c) Defining and clarifying the role of the Mental Health Professional.

SECTION 7.02. NATURE OF ONGOING ROLES

- (a) An ongoing role is compatible with and/or extends a Collaborative role. A Child Specialist, for example, may move into a post-divorce role as a parenting coordinator.

Similarly, a Communications Facilitator may remain available to the participants to address specific divorce-related issues after the Collaborative process concludes.

- (b) The Mental Health Professional should discuss the following questions with the clients and Collaborative team before accepting an ongoing role. Would an ongoing role:
 - i Prevent the Mental Health Professional from participating on the team if the participants renew a Collaborative process;
 - ii Create a conflict of interest with prior role(s) in the Collaborative process [See Section 7.03.];
 - iii Jeopardize existing neutrality or undermine the perception of the Mental Health Professional's existing neutrality [See Section 7.04.]; or
 - iv Leave the records, previously protected by the Collaborative agreement, open to disclosure? [See Section 7.05.]

SECTION 7.03. AVOIDING CONFLICTS OF INTEREST

- (a) The Mental Health Professional should avoid taking on an ongoing role that creates a conflict of interest with the original role in the Collaborative process.
- (a) One cornerstone of the safe environment sought by Collaborative teams is the expectation of full disclosure of information. In contrast, one cornerstone of the safe environment sought by therapists is the expectation of strict confidentiality. Attempting to perform both roles may create a conflict of interest for the Mental Health Professional between encouraging disclosure and protecting confidentiality.

SECTION 7.04. MAINTAINING NEUTRALITY

The Mental Health Professional maintains neutrality after the Collaborative process concludes. The Mental Health Professional does not accept an ongoing role if there is a reasonable risk that neutrality or its appearance would be compromised. A Mental Health Professional cannot become an expert or therapist for one party and continue to be a neutral resource for all the Collaborative participants.

SECTION 7.05. RECORDS AND CONFIDENTIALITY

- (a) The Mental Health Professional takes effective precautions to honor and avoid jeopardizing the original agreements including not accepting an ongoing role if necessary. The Mental Health Professional assesses the risk, in consultation with the other participants, of whether or not a continuing role is compatible with the confidentiality agreements of the prior Collaborative process.
- (b) To protect the confidentiality of the participants' subsequent communications with the Mental Health Professional prior to the conclusion or termination of the Collaborative process, it may be necessary to obtain an agreed court order shielding the Mental Health Professional's records once the Collaborative process concludes or terminates.

SECTION 7.06. INFORMED CONSENT

The Mental Health Professional provides ongoing services only with the agreement of all of the clients. A change in services requires a new informed consent. After discussing with the clients the risks and advantages of continuing to provide services, the Mental Health Professional introduces a new informed consent. Even with all the clients' consent, however, the Mental Health Professional has an independent responsibility to assess whether an ongoing role is in the best interest of each client.

SECTION 7.07. ONGOING ROLES WHEN THE COLLABORATIVE PROCESS CONCLUDES WITH AN AGREEMENT

If the above conditions are satisfied, Mental Health Professionals may provide services in the following ongoing roles:

- (a) As a Communications Facilitator: Once the Collaborative process concludes, a Communications Facilitator may help the clients address matters related to the agreement by continuing to help them communicate effectively, attain the goals established through the Collaborative process, and consider the range of available options to solve ongoing problems.
- (b) As a Child Specialist:
 - i To assist the parents in resolving issues related to parenting, including; educating family members about good parenting practices, educating family members about child development, educating family members about specific issues related to the children.
 - ii The Child Specialist remains impartial and neutral but may have an opinion regarding a specific issue.
 - iii The Child Specialist's decision-making or reporting authority, if any, is agreed upon during the Collaborative process and described in a letter of engagement. For example, the parents may agree that the Child Specialist has the authority to be a "tie breaker" in the event the parents disagree about a specific issue, such as school placement. As another example, the Child Specialist may have a reporting function, such as informing all participants about a parent's compliance with substance abuse treatment.
 - iv In this role, Child Specialists do not provide therapy, perform parenting plan evaluations or coordinate parenting plans.

SECTION 7.08. ONGOING ROLES WHEN THE COLLABORATIVE PROCESS TERMINATES WITHOUT AN AGREEMENT

- (a) Participants terminate the Collaborative process for various reasons. The clients may decide they can meet their interests more effectively by litigating. Collaborative Lawyers may terminate the process if they believe their clients are not using the process in good faith. In some instances, the spouses may terminate or suspend the Collaborative process to attempt reconciliation. In most cases, the Mental Health Professional's involvement will end when the Collaborative process terminates with an agreement. Participants will sometimes ask the Mental Health Professional to take an ongoing role.

For example, the clients may reach legally binding parenting agreements using the Collaborative process but opt to use litigation to handle specific financial matters. In this case, the clients may wish to engage the Mental Health Professional in an ongoing role as a Parent Coordinator.

- (b) The Mental Health Professional has the same responsibility to protect the integrity of the Collaborative process as when the Collaborative process concludes with an agreement. Consequently, the Mental Health Professional should follow the same guidelines when considering an ongoing role [See Previous Sections 7.01 - 7.06].

SUBTITLE E
PROTOCOLS FOR FINANCIAL PROFESSIONALS INVOLVED IN A
COLLABORATIVE MATTER

INTRODUCTION

The Alaska Association of Collaborative Professionals (AKACP), a statewide nonprofit organization, and federally recognized tax-exempt organization, recognizes the benefit of and is committed to the appropriate use of a neutral Financial Professional as a formal part of the Collaborative team.

The AKACP considers it advisable to have protocols of practice to assist the Financial Professional in Collaborative law engagements. The protocols committee relied upon many resources, particularly the Protocols of Practice for Financial Professionals provided to us by the Collaborative Law Institute of Texas, as well as the collective experience of Financial Professionals, lawyers, and Mental Health Professionals engaged in Collaborative law in Alaska.

These protocols apply only to Financial Professionals and address the following: the relationship between the Financial Professional and the clients during and after the Collaborative process; the relationships between the Collaborative Lawyers, Mediators, Mental Health Professionals, and the Financial Professional; protection of the Collaborative process; the role of the neutral Financial Professional; communication with clients, lawyers, and other allied professionals; and withdrawal from the process.

These protocols are designed to address issues commonly encountered by the Financial Professional in Collaborative law and describe what AKACP considers to be best practices. We hope that Collaborative Financial Professionals find the protocols useful and that practicing Financial Professionals will embrace the protocols as a guideline for effectively handling a Collaborative law matter.

CHAPTER 1
GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE.

These protocols may be cited as "AKACP Fin. Prof. Protocols".

SECTION 1.02. DEFINITIONS

All definitions are contained in "Universal Definitions," subtitle A of this document.

SECTION 1.03. ETHICAL CONSIDERATIONS

- (a) These protocols are subordinate to any U.S. and/or state administrative or licensing rules that govern the Financial Professional in his or her jurisdiction and practice area. In

addition, if any credentialing organization promulgates rules or standards of conduct that conflict with these protocols, those rules or standards shall supersede these protocols to the extent that, in the Financial Professional's judgment, these protocols cannot be followed. The Financial Professional shall disclose and resolve any such conflicts to the members of the Collaborative team prior to accepting the engagement, or as soon as feasibly possible.

- (b) Certified Public Accountants (CPAs) are subject to the Alaska Board of Public Accountancy Statutes and Regulations, which can be found at the Alaska Board of Public Accountancy website (<http://www.commerce.state.ak.us/occ/pepa6.htm>). In addition, the American Institute of Certified Public Accountants develops standards for services provided by Certified Public Accountants. The Certified Financial Planner Board of Standards, Inc. establishes standards for services provided by Certified Financial Planners (CFPs).
- (c) These protocols should be interpreted in a manner consistent with those rules or rules similarly promulgated by the licensing or governmental administrative organization having authority over a Financial Professional's conduct in engagements other than Collaborative law matters.

SECTION 1.04. OBSERVANCE OF PROTOCOLS

The AKACP strongly recommends that all individual Financial Professionals, their firms, and local practice groups adopt these protocols as expected, fundamental behavior for all Financial Professionals engaged in the Collaborative law process.

SECTION 1.05. FORMS

We urge the use of the forms promulgated by the AKACP available through electronic download on the AKACP website at www.alaskacollaborative.org. Common formatting assists in compliance with these protocols, enables all participants to work from a familiar set of resources, and enhances settlement meetings and communications. Downloaded forms may be customized to each case.

CHAPTER 2 ENGAGEMENT CONSIDERATIONS

SECTION 2.01. SUITABILITY FOR COLLABORATIVE ENGAGEMENT

The Financial Professional should be aware that certain matters might be inappropriate for the Collaborative process and should exercise prudent judgment in accepting or declining a Collaborative engagement.

Appropriate engagements are those in which (1) the Financial Professional is able to be neutral, (2) clients' and lawyers' objectives are consistent with the principles of Collaborative law, and (3) there is no indication of dishonesty of purpose or fraud. A Financial Professional should inquire as to whether any other Financial Professional has been engaged to fill the same role in a case, prior to accepting the engagement.

- (a) A Financial Professional should decline to be involved in a Collaborative engagement when they become aware of a client or lawyer seeking to use the Collaborative process to gain an advantage, regardless of magnitude or materiality e.g. furthering a position to prepare for litigation.
- (a) Positioning, disregarding a party's input, or acting in a biased manner is conduct that is inconsistent with these protocols and is contrary to the spirit of the Collaborative process.
- (b) The Financial Professional should carefully assess matters for untreated mental health issues, addictions, and family violence to determine whether the Financial Professional is willing and able (with the assistance of the team's MHP) to handle the matter.
- (c) Collaborative law is not to be used as a subterfuge by clients with ulterior motives.
- (d) The Financial Professional acknowledges that choosing Collaborative law as a dispute resolution process is the clients' prerogative.
- (e) Should a Financial Professional be confronted with a client or lawyer who wishes to exploit the Collaborative law process, the Financial Professional should assess:
 - i Whether the Financial Professional, with or without the assistance of other members of the Collaborative law team, can overcome the barriers to the honest application of the Collaborative law process;
 - ii Whether the Financial Professional possesses the requisite skills to overcome the barriers in a reasonable timeframe and within the Collaborative spirit; and
 - iii Whether there are adequate resources (such as other allied professionals) available to supplement the Financial Professional's expertise.
- (f) When the Financial Professional becomes unable to adequately perform his or her duties during an engagement, he or she shall consider referral to another Collaborative allied professional and follow the steps prescribed herein [See Chapter 6.Subtitle E. Withdrawal.]

SECTION 2.02. ROLE OF THE FINANCIAL PROFESSIONAL

The role of the Financial Professional is to request, gather, analyze, and evaluate financial data provided by the clients and lawyers. It is essential that the Financial Professional remains neutral, maintains confidentiality (as described in these protocols), and works within the Collaborative law process to facilitate an agreement between the clients. The clients' financial goals, as originally established and subsequently revised, should always remain paramount.

- (a) The Financial Professional should verify the clients' interests, goals, and expectations that influence the financial analyses.
- (a) The Financial Professional may undertake various services which may include gathering financial details, developing budgets, financial modeling, presenting possible financial options of settlement, valuing property, evaluating tax and economic issues, forecasting

cash flows, examining retirement and insurance issues, preparing inventories and financial settlement scenarios, and tracing and characterizing property.

- (b) The clients define the scope of the Financial Professional's engagement, with input from the Financial Professional and the Collaborative Lawyers. If, during the course of a Financial Professional's engagement, a client or lawyer requests the Financial Professional to perform services that are beyond the scope of the engagement, the Financial Professional has a duty to bring this request to the attention of the Collaborative team before the additional work may be performed.
- (c) The Financial Professional shall not provide legal advice, other than legal advice related to tax matters, although the Financial Professional may provide legal information. Providing legal advice is assessing and applying principles of law to a particular factual situation. Providing legal information is providing codes, statutes, regulations, and similar information to a client.

SECTION 2.03. TERMS OF ENGAGEMENT

The terms of the engagement of a Financial Professional in a Collaborative law matter should be consistent with these protocols and the protocols of practice for Collaborative Lawyers. The Financial Professional becomes engaged in a Collaborative case through a written agreement that reflects a collective and informed joint decision of the clients and their respective lawyers. The written agreement should clearly define the scope and purpose of the Financial Professional's responsibility in the Collaborative law process, disclose areas of potential conflict of interest, address such matters as agreements regarding communications, retainers, fees, and sources of funds from which the Financial Professional is paid, and whether or not the Financial Professional may be called upon to provide future testimony.

SECTION 2.04. OWNERSHIP OF ACCOUNTANT'S WORKING PAPERS

Pursuant to AS 08.04.660: statements, records, schedules, working papers, and memoranda made by a CPA incident to or in the course of professional service to a client, except reports submitted to a client, are the property of the accountant, in the absence of an express agreement between the accountant and the client, to the contrary. Therefore, although it might seem convenient for the clients and other members of the team to take possession of electronic working papers, such as spreadsheets, a CPA should carefully consider requests to release working papers to anyone.

CHAPTER 3 RELATIONSHIP OF THE FINANCIAL PROFESSIONAL TO CLIENTS AND LAWYERS

SECTION 3.01. ENGAGEMENT

A neutral Financial Professional (FP) is engaged in a Collaborative law matter with the expectation that the Financial Professional serve the interests of both clients in an impartial, unbiased, and independent manner. The Financial Professional recognizes that the clients' and lawyers' perception of the Financial Professional's continued impartiality and objectivity is largely influenced

by the nature and extent of the Financial Professional's written and oral communications with the clients and lawyers. The neutral Financial Professional must be Collaboratively trained and must be a member of AKACP.

SECTION 3.02. COMMUNICATIONS

- (a) Initial communications with the clients and/or lawyers will establish the perceptions of the Financial Professional's objectivity and neutrality in the minds of the clients and lawyers. The Financial Professional will work diligently to maintain the trust and confidence of all clients, carefully avoiding the perception of bias.
- (a) Specific facts and circumstances of a case may require more interaction with one client or lawyer than the other. For example, the clients may agree that one party possesses less skill than the other in personal money management and requires additional time with the Financial Professional. Whenever this occurs, it is important that the clients understand and agree to this inequality of time. Interactions perceived as excessive with one client and/or lawyer can give rise to the appearance of bias.
- (b) Clients and lawyers should receive copies of all written communications between the clients and the Financial Professional, except when, in the Financial Professional's judgment, such communication might be counterproductive to the Collaborative process. In that case, the written communication should only be shared with both lawyers.
- (c) When a client verbally shares information with the Financial Professional without the other client or lawyer being present, the Financial Professional needs to make it clear that certain verbally communicated information may, in the Financial Professional's judgment, be shared with that client's lawyer, regardless of that client's request to the contrary. The lawyers will then make the decision as to whether the information will assist in the Collaborative process or not, and the manner in which it needs to be brought up, if at all.

SECTION 3.03. DISCLOSURE

- (a) The neutrality of the Financial Professional, both in fact and perception, is imperative and should always be maintained. A perceived prejudice toward one party may be as harmful to the Collaborative process as an actual prejudice, and every effort should be made to avoid even the appearance of bias. A discussion of conflict of interest and both the reality and the perception of neutrality should be a part of the initial meeting. Any potential conflict of interest must be made known to both clients and lawyers as soon as it becomes apparent.
- (a) The Financial Professional shall disclose to the clients and lawyers the nature and extent of any past or present business or personal relationship with either client or either lawyer.
- (b) The Financial Professional shall also disclose any business relationship between the Financial Professional and either client or either lawyer, and this must be discussed prior to the engagement. The purpose of such disclosure is to provide an opportunity for any

party to evaluate the impact of these relationships on how the clients will perceive the Financial Professional's neutrality and if the Financial Professional will be engaged. The potential conflict may not prevent the Financial Professional from being employed, or continuing employment, if both clients concur.

- (c) The sources of compensation received by the Financial Professional, which are not related to the Collaborative process may also create a real or perceived conflict of interest and must be disclosed. Examples of compensation that must be disclosed are fees or commissions for product sales, asset management services, audit and tax services, and business consulting services.

SECTION 3.04. WORKING WITHIN THE SCOPE OF THE ENGAGEMENT

The nature and scope of the Financial Professional's services should be clearly stated, preferably in an approved, written agreement. The Financial Professional may not perform any services that are outside the scope of the engagement without prior approval by the clients and their lawyers. The scope should not be materially modified unless it is documented in writing and signed by the clients and their lawyers. No such modification should be undertaken if a client's perception of the Financial Professional's objectivity has been impaired.

SECTION 3.05. PAYMENT OF FEES

- (a) The clients and the Financial Professional, prior to the commencement of work by the Financial Professional, should designate, in writing, the person responsible for and the source of the payment of the Financial Professional's fees. If one client is paying all or a substantial portion of the fees, the other client should be informed that this fact would not cause any bias in favor of the client who is responsible for the fees. The Financial Professional should remain current on fees during the course of the engagement to avoid any perception that a buildup in fees receivable is impairing the Financial Professional's objectivity.
- (a) Timely and adequate fee status updates should be made to lawyers and clients. Fees are a valid topic to include on any meeting agenda.

SECTION 3.06. DOCUMENTATION

- (a) The level of engagement documentation should be commensurate with the scope of work and should provide support for the Financial Professional's work product. If one client provides documents, the other client and/or lawyer should be afforded the opportunity to review and/or make copies at any time.
- (z) The Financial Professional shall perform adequate inquiries in order to effectively perform their engagement. If the Financial Professional is not provided adequate information to support a complete analysis, then the Financial Professional should discuss the inadequacy with the lawyers. The Financial Professional's work product should always adhere to all applicable professional standards. The Financial Professional should clearly communicate an explanation of all assumptions and methodologies used.

CHAPTER 4

RELATIONSHIP OF THE FINANCIAL PROFESSIONAL TO OTHER ALLIED PROFESSIONALS

SECTION 4.01. TEAM CONCEPT

- (a) The AKACP encourages the practice of using a team of four professionals consisting of a Financial Professional, Communications Facilitator or Mediator, and the two lawyers. The professionals should be those deemed collectively to best meet the needs of the client. Allied professionals are hired by the clients with advice and input from their respective lawyers. All the allied professionals should consider themselves part of the Collaborative team, working together to achieve a mutually agreeable settlement. To this end, it is essential that each Financial Professional be informed of any sensitive issues, (including mental health issues) which might complicate settlement of the case.
- (a) It is advisable for the lawyers, Mediators, and Mental Health Professionals to have an overview of the financial information to enable them to anticipate any potential problems. The Financial Professional should also anticipate areas of emotional concern and work with the other Collaborative professionals to allow time to address such issues.

SECTION 4.02. COMMUNICATIONS

- (a) In order to facilitate resolution of the case, the Financial Professional should obtain permission to communicate directly with other allied professionals (for example, a Mental Health Professional, Mediator, or another Financial Professional who has a different scope of work) when, in the Financial Professional's judgment, it would be helpful in achieving the clients' goals. In the absence of prior discussion or agreement otherwise, it is advisable that the Financial Professional communicate first with both lawyers, when facts or issues are discovered during the scope of the Financial Professional's engagement which are relevant to the case.
- (a) It is appropriate for the Financial Professional to ask for the involvement of a Mediator or Mental Health Professional (whether or not one has been designated in the case) when, in the Financial Professional's judgment, it would help further the Collaborative law process. For example, often a client's goal clarification involves input and coordination with both the Financial Professional and the Mental Health Professional. In those cases, a Mental Health Professional can address the underlying issues with the client (fear, anger, etc.) to help move the client toward acceptable solutions without interfering with the Collaborative work of the Financial Professional.

SECTION 4.03. SPECIAL ISSUES CONSULTANTS (I.E. FINANCIAL EXPERTS)

A financial expert may be used for specific issues, such as a business, pension valuation, or pension health benefit valuation. Care should be taken to inform this Special Issues Consultant that they are working for the team as a whole, in a neutral role. The use of a financial expert not Collaboratively trained but especially knowledgeable of a client's financial history can be particularly challenging. Such a professional may be primarily aligned with one client and see his or her role as advising that client rather than being neutral.

CHAPTER 5

PROTECTING THE COLLABORATIVE PROCESS

SECTION 5.01. INTEGRITY OF THE PROCESS

A main objective of the Collaborative law process is to achieve an ethical and enduring settlement for the clients. The Financial Professional should assist the client within the scope of the engagement, furthering the clients' knowledge and providing the information and insight needed to make decisions that will meet, to the extent possible, each client's goals. The Collaborative team recognizes that the client is responsible for the ultimate outcome of the Collaborative effort. The Financial Professional recognizes that the information and knowledge they provide to both clients may significantly influence the outcome. Every effort should be made to provide accurate, unbiased information presented in a format that is easily understood and available to both clients.

SECTION 5.02. HONESTY AND FULL DISCLOSURE BY THE CLIENTS

- (a) The Financial Professional recognizes that honesty and full disclosure by the client of relevant information is critical to the successful outcome of a Collaborative law matter. The Financial Professional should assist the client in complying with the requirement of making a full and candid exchange of all relevant or requested documents and information. The clients should be informed that information given to the Financial Professional might be made available to all members of the Collaborative team.
- (b) Both the fact and the perception of neutrality of the Financial Professional are essential to the Collaborative process. Consequently, all concerns expressed by each client, whether perceived by the Financial Professional as pertinent or not, should be incorporated as fully as practical and presented in an environment that will eliminate even the perception of bias. When both clients agree that certain information is irrelevant, it can be omitted in the interest of simplicity.
- (c) Financial Professionals may, in the course of performing their requested work, make a discovery that is contrary to the information provided or the position taken by one of the clients. Often, information has inadvertently been left out or forgotten and the opportunity should always be provided for further disclosure without making either party uncomfortable.
- (d) If the offending party does not readily embrace full disclosure, the Financial Professional shall seek the assistance of one or both lawyers, the Mediator, and/or Mental Health Professional to address the problem without derailing the Collaborative process. The issue should not be discussed with the other client. It is essential, especially during this clarification time, that Financial Professional neutrality be preserved both in fact and perception.

SECTION 5.03. IDENTIFICATION OF ASSETS AND LIABILITIES AND VALUATION

Financial Professionals may be hired to assist in the identification of assets and liabilities and in valuing assets. Every effort should be made to document the date of the valuation and the source of documentation. This documentation is particularly relevant when one party is less knowledgeable of the financial issues involved than the other. The documentation should, when

possible, contain all information necessary for insertion into the final decree, saving future time and expense. Clients should be encouraged to work together, with or without the Financial Professional, to jointly prepare the inventory. The Financial Professional should be fully available to answer questions from the clients; encouraging open communication and thereby conserving funds.

SECTION 5.04. CORRECTION OF MISTAKES

The Financial Professional may, through faulty information and/or human error, create a false impression or provide inaccurate data. When the error is discovered, it should be promptly corrected and disclosed.

SECTION 5.05. SAFE ENVIRONMENT

The Financial Professional should strive to provide a safe environment for the Collaborative matter that supports goal setting, data gathering, and agreement. The Financial Professional acknowledges that a safe environment necessarily involves the following principles:

1. Refrain from insistence on acceptance of conditions precedent to entering into the Collaborative law process;
2. Encourage creative problem-solving and discourage positional bargaining;
3. Speak directly with participants about any perceived non-collaborative behavior and attempt to remedy same in a constructive manner;
4. Accept critical feedback non-defensively and help to reframe criticism to become a constructive part of the process;
5. Exercise and model patience, active listening, and constructive dialogue at all times;
6. Avoid and discourage the use of pressure, threats or deadlines;
7. Acknowledge the process can only progress at the pace of the slowest participant;
8. Avoid offensive or provocative conduct and promptly remind each other that such behavior is destructive to the process;
9. Avoid assessment of blame and use of judgmental language;
10. Avoid surprises such as undisclosed relationships, value of certain assets, etc.;
11. Adhere to agendas and establish realistic timelines;
12. Allow clients to set the timing of issues and agreements;
13. Avoid unilateral actions and facilitate team building and joint engagement of allied professionals throughout the process;
14. Urge participants to speak in a way that encourages others to listen and to listen in a way that encourages others to speak. Use language that encourages first-person speech (I

feel, I believe, etc.) and avoids second-person speech (you know, you failed, you always, you never, etc.);

15. Train non-allied professional employees to be knowledgeable about these protocols;
16. Be mindful of power imbalances due to gender, control, culture, domestic violence, domination and coercive control, and other factors; and
17. Avoid unsolicited professional opinions in the joint meeting.

SECTION 5.06. SERVICES OUTSIDE OF THE COLLABORATIVE ENGAGEMENT

- (a) The solicitation of the Collaborative Financial Professional's services, outside of the Collaborative law engagement, is strictly prohibited, in any manner at any time during the engagement.
- (b) During the Collaborative process, the Financial Professional may not provide, to either client, financial services that are outside the scope of the engagement.
- (c) A Financial Professional may, during the Collaborative process, agree to provide one or both clients with financial services after the end of the Collaborative process only if:
 - i The Financial Professional reasonably believes the Financial Professional's representation of both clients during the Collaborative process will remain impartial and will not be materially affected; and
 - ii Each client consents to such agreement after full disclosure of the existence, nature, implications, and possible adverse consequences of the agreement, and the advantages involved, if any.
- (d) Nothing in this section prohibits the Financial Professional from providing unsolicited services to a client after the end of the Collaborative process, provided the requirements of this section are satisfied during the Collaborative process. However, it is generally advisable to refrain from doing future work for either client outside the Collaborative process because doing so may cause a conflict of interest which will preclude the Financial Professional from future participation in the Collaborative matter. For example, if the clients' future financial condition changes such that a revision of child support becomes necessary, the Financial Professional could be re-engaged in the Collaborative matter as a financial neutral. However, if the Financial Professional has lost neutrality by providing services to one party since the original Collaborative matter was resolved, that professional will probably not be in a position to serve the clients and the other team members neutrally and effectively.
- (e) If a client approaches a Financial Professional about a future working relationship during the Collaborative process, an appropriate response would be, "I cannot, during the Collaborative process, discuss any subsequent business relationship with you unless the other client provides his/her fully informed consent and all team members are notified. The reality and perception of neutrality is too crucial to the Collaborative process." In the event that either client does approach a Financial Professional during the Collaborative process about working with said client in any capacity following the end of

the Collaborative engagement, the Financial Professional must inform such client that he or she may not, during the Collaborative process, agree to such an arrangement without the other client's advance informed consent, and notification of all team members.

- (f) If, during the Collaborative process, one client does in fact employ the Financial Professional for work after the Collaborative case has concluded, the perception of neutrality may be compromised. However, if the other client is fully informed of the risks, including the potential loss of the Financial Professional's neutrality during the Collaborative process, and nevertheless agrees to permit the Financial Professional to agree during the Collaborative process to provide financial services to the other party, then the Financial Professional may, during the Collaborative process, agree with the other client to provide such financial services after the end of the Collaborative case. However, when a disinterested Financial Professional would conclude that the client should not - because of a lack of sophistication or for any other reason - consent to the future relationship, the Financial Professional should not ask for or accept such consent or provide representation in the Collaborative process on the basis of the client's consent.
- (g) Disclosure and consent are not mere formalities. Disclosure sufficient for sophisticated clients may not be sufficient to permit less sophisticated clients to be fully informed.

CHAPTER 6 WITHDRAWAL

The Financial Professional has an obligation to communicate to the clients and the lawyers, any circumstances that might precipitate withdrawal of the Financial Professional, thus affording the Collaborative team an opportunity to remedy the situation. Examples of events that may require withdrawal if not resolved include:

An attempt by either party to limit the scope of the engagement;

The withholding of information required for the performance of the engagement;

The attempt by either client or lawyer to work outside the protocols of Collaborative law with respect to the Financial Professional's engagement, including excessive lobbying or attempts to influence the judgments or conclusions of the Financial Professional;

Any threats of litigation, coercion, intimidation etc. from either client or lawyer;

The continued, uncorrected, problematic communications with either client or lawyer; and

The continued non-payment of agreed upon fees.

A Financial Professional may withdraw from a Collaborative law engagement by giving three business days' written notice to the clients and the lawyers. Notice of withdrawal of a Financial Professional does not terminate the Collaborative law process and the clients should be given an opportunity to engage another Financial Professional. It is prohibited for a Financial Professional who withdraws (voluntarily or otherwise) from a case to develop, encourage, or solicit any future business relationship with either of the clients involved.

The resigning Financial Professional should acquaint any successor Collaborative Financial Professional with the financial facts of the case in an impartial manner. The withdrawing Financial Professional has an obligation to make all relevant documents available to both clients as soon as possible after withdrawal.

SUBTITLE F
PROTOCOLS OF PRACTICE FOR MEDIATORS INVOLVED IN
COLLABORATIVE FAMILY LAW

INTRODUCTION

The Alaska Association of Collaborative Professionals (AKACP), a statewide nonprofit organization, and federally recognized tax-exempt organization, recognizes the benefit of and is committed to the appropriate use of Mediators as neutral facilitators in Collaborative law matters. AKACP considers it advisable to have protocols to assist Mediators in Collaborative law engagements.

These protocols apply only to Mediators and address the following: the relationship between the Mediator and the clients during and after the Collaborative process; the relationship between the Mediator and other professional members of the Collaborative team; protection of the Collaborative process; the role of the Mediator; communications with clients, lawyers, and other allied professionals; and withdrawal from the process.

These protocols are designed to address issues commonly encountered by the Mediator in Collaborative law and describe what AKACP considers to be best practices. We hope the Collaborative Mediator finds the protocols useful, and uses them as a guideline for effectively mediating a Collaborative law matter.

CHAPTER 1
QUALIFICATIONS AND ETHICAL CONSIDERATIONS

SECTION 1.01. MEMBERSHIP IN AKACP

All Mediators participating in Collaborative law cases through AKACP must be members in good standing of AKACP.

SECTION 1.02. MEDIATION AS FOCUS OF PRACTICE

All Mediators participating in Collaborative law cases through AKACP must devote at least 40 percent of their professional practice to mediation.

SECTION 1.03. CREDENTIALING OF THE MEDIATOR

All members participating in Collaborative law cases through AKACP must be licensed either as a lawyer, Mental Health Professional or Financial Professional. In addition, all Mediators participating in Collaborative law cases through AKACP must demonstrate professional credentials through one or more of the following methods:

1. Hold current membership as a Family and Divorce Mediator or Advanced Practitioner with the Association for Conflict Resolution (ACR);

2. Hold current membership as an Advanced Mediator with the Academy of Professional Family Members (APFM), or
3. Serve as a contracting Mediator with the Alaska Court System for its Early Resolution Program (ERP), Child Custody and Visitation Mediation Program (CCVMP); Child in Need of Aid (CINA) Mediation Program; or Adult Guardianship Mediation (AGM) program; who has successfully completed mentoring (or who has been mediating in the program prior to the implementation of the mentoring component of the program), and who has completed at least 10 mediations in one or more of the Alaska Court System programs or other family mediation.

SECTION 1.04. ETHICAL CONSIDERATIONS

All Mediators participating in Collaborative law cases through AKACP must be familiar with and practice mediation in accordance with the Association for Conflict Resolution (ACR) Model Standards of Conduct for Mediators.

CHAPTER 2 ENGAGEMENT CONSIDERATIONS

SECTION 2.01. SUITABILITY FOR COLLABORATIVE ENGAGEMENT

The Mediator should be aware that certain matters might be inappropriate for the Collaborative process and should exercise prudent judgment in accepting or declining a Collaborative engagement.

Appropriate engagements are those in which (1) the Mediator is able to be neutral, (2) clients' and lawyers' objectives are consistent with the principles of Collaborative law, and (3) there is no indication of dishonesty of purpose or fraud. A Mediator should inquire as to whether any other Mediator has been engaged to fill the same role in a case, prior to accepting the engagement.

- (a) A Mediator should decline to be involved in a Collaborative engagement when they become aware of a client or lawyer seeking to use the Collaborative process to gain an advantage, regardless of magnitude or materiality e.g. furthering a position to prepare for litigation.
- (a) Positioning, disregarding a party's input, or acting in a biased manner is conduct that is inconsistent with these protocols and is contrary to the spirit of the Collaborative process.
- (b) The Mediator should carefully assess matters for untreated mental health issues, addictions, and family violence to determine whether the Mediator is willing and able to handle the matter, with or without the assistance of other allied professionals on the Collaborative law team.
- (c) Collaborative law is not to be used as a subterfuge by clients with ulterior motives.
- (d) The Mediator acknowledges that choosing Collaborative law as a dispute resolution process is the clients' prerogative.

- (e) Should a Mediator be confronted with a client or lawyer who wishes to exploit the Collaborative law process, the Mediator should assess:
 - i Whether the Mediator, with or without the assistance of other members of the Collaborative law team, can overcome the barriers to the honest application of the Collaborative law process;
 - ii Whether the Mediator possesses the requisite skills to overcome the barriers in a reasonable timeframe and within the Collaborative spirit; and
 - iii Whether there are adequate resources (such as other allied professionals) available to supplement the Mediator's expertise.
- (f) When the Mediator becomes unable to adequately perform his or her duties during an engagement, he or she shall consider referral to another Collaborative allied professional and follow the steps prescribed herein [See Section 6. Subtitle F. Withdrawal.]

SECTION 2.02. ROLE OF THE MEDIATOR

The role of the Mediator is to facilitate, as a neutral, in a Collaborative process in order to promote an agreement between the clients. The Mediator can function in a neutral role either from the outset of the Collaborative process or can be brought in later in the process to facilitate resolution of an impasse either between the clients or amongst team members. The Mediator does not provide legal or financial advice, nor does the Mediator provide Mental Health Professional services such as therapy, counseling, psychological or psychiatric services.

SECTION 2.03. TERMS OF ENGAGEMENT

The terms of engagement of a Mediator in a Collaborative law matter should be consistent with these protocols and the protocols of practice for Collaborative Lawyers. The Mediator becomes engaged in a Collaborative case through a written agreement reflecting a collective and informed decision of the clients and their respective lawyers. The written agreement should clearly define the scope of the Mediator's responsibility in the Collaborative law process, disclose areas of potential conflicts of interest, address such matters as agreements regarding communications, retainers, fees, and sources of funds from which the Mediator is paid, and that the Mediator shall not be called upon to provide future testimony.

CHAPTER 3

RELATIONSHIP OF THE MEDIATOR TO CLIENTS AND LAWYERS

SECTION 3.01 COMMUNICATIONS

- (a) Initial communications with the clients and/or lawyers will establish the perceptions of the Mediator's objectivity and neutrality in the minds of the clients and lawyers. The Mediator will work diligently to maintain the trust and confidence of all clients, and will work to avoid any perception of bias.

- (aa) Circumstances may require a Mediator to interact more with one client or lawyer than the other. Whenever this occurs, the Mediator will work with the clients and lawyers to avoid any perception of bias.
- (bb) The Mediator's obligations regarding confidentiality of communications shall be governed by the Association for Conflict Resolution (ACR) Model Standards of Conduct for Mediators. The Mediator shall, consistent with these Model Standards, encourage transparency and honesty in the Collaborative process.

SECTION 3.02 DISCLOSURES

- (a) A discussion of the importance of the Mediator's neutrality, both in reality and perception, should be a part of the initial meeting. Any potential conflict of interest must be made known to both clients and lawyers as soon as it becomes apparent.
- (b) The Mediator shall disclose to the clients and lawyers the nature and extent of any past or present business or personal relationship with either client or either lawyer. The Mediator shall not serve, or continue to serve, in any Collaborative process where the Mediator's neutrality, actual or perceived, is compromised.

SECTION 3.03 PAYMENT OF FEES

- (a) The clients and the Mediator, prior to the commencement of work by the Mediator, shall specify in writing the person(s) responsible for and the source of the payment of the Mediator's fees. If one client is paying all or a substantial portion of the fees, the Mediator must maintain his/her neutrality nonetheless, and again, should not serve, or continue to serve, in any Collaborative process where the Mediator's neutrality, actual or perceived, is compromised.
- (b) Timely and accurate fee status updates should be made to lawyers and clients. Fees are a valid topic to include on any meeting agenda.

CHAPTER 4 RELATIONSHIP OF THE MEDIATOR TO OTHER ALLIED PROFESSIONALS

SECTION 4.01. TEAM CONCEPT

All allied professionals should consider themselves part of the Collaborative team, working together to achieve a mutually agreeable settlement. To this end, it is essential that the Mediator be informed of any sensitive issues that might complicate settlement efforts. Sensitive issues may include mental health or capacity, relationship, communication, trust, financial, legal or other issues.

SECTION 4.02. COMMUNICATIONS

The Mediator should communicate directly with the clients and/or other allied professionals when, in the Mediator's judgment, such communications would help facilitate the Collaborative process.

CHAPTER 5 PROMOTING A COLLABORATIVE PROCESS

SECTION 5.01. PRIMARY OBJECTIVE AND DECISION MAKING

A primary objective of the Collaborative law process is to achieve an ethical and enduring settlement for the clients, which meets their needs and interests to the greatest extent possible. The Mediator, and all allied professionals, realize that the client is the only person who decides whether or not to reach an agreement, and if so, on what terms. Every effort should be made by the Collaborative team, including the Mediator, to assist the clients in making these decisions for themselves.

SECTION 5.02. HONEST AND FULL DISCLOSURE BY THE CLIENTS

- (a) The Mediator recognizes that honest and full disclosure of relevant information, by the client, is essential to the successful outcome of a Collaborative law matter. The Mediator shall encourage and promote honest and full disclosure throughout the process.
- (b) If the Mediator believes that honest and full disclosure has not been made by a client, the Mediator shall address that concern with the client's lawyer. If, after addressing the issue with the client's lawyer, the Mediator continues to believe that honest and full disclosure of relevant information has not been made, the Mediator shall review the ethical provisions of the ACR Model Standards of Conduct for Mediators to determine whether the Mediator needs to withdraw from the Collaborative matter, and if so, what disclosures the Mediator should or should not make in explaining his or her withdrawal.

SECTION 5.03 SAFE ENVIRONMENT

The Mediator should strive to provide a safe environment for the Collaborative matter that supports goal setting, data gathering, and agreement. The Mediator acknowledges that a safe environment necessarily involves the following principles:

- 1. Refrain from insistence on acceptance of conditions precedent to entering into the Collaborative law process;
- 26. Encourage creative problem-solving and discourage positional bargaining;
- 27. Speak directly with participants about any perceived non-collaborative behavior and attempt to remedy same in a constructive manner;
- 28. Accept critical feedback non-defensively and help to reframe criticism to become a constructive part of the process;
- 29. Exercise and model patience, active listening, and constructive dialogue at all times;
- 30. Avoid and discourage the use of pressure, threats or deadlines;
- 31. Acknowledge the process can only progress at the pace of the slowest participant;

32. Avoid offensive or provocative conduct and promptly remind each other that such behavior is destructive to the process;
33. Avoid assessment of blame and use of judgmental language;
34. Avoid surprises such as undisclosed relationships, value of certain assets, etc.;
35. Adhere to agendas and establish realistic timelines;
36. Allow clients to set the timing of issues and agreements;
37. Avoid unilateral actions and facilitate team building and joint engagement of allied professionals throughout the process;
38. Urge participants to speak in a way that encourages others to listen and to listen in a way that encourages others to speak. Use language that encourages first-person speech (I feel, I believe, etc.) and avoids second-person speech (you know, you failed, you always, you never, etc.);
39. Train non-allied professional employees to be knowledgeable about these protocols;
40. Be mindful of power imbalances due to gender, control, culture, domestic violence, domination and coercive control, and other factors; and
41. Avoid unsolicited professional opinions in the joint meeting.

SECTION 5.04. SERVICES OUTSIDE OF THE COLLABORATIVE ENGAGEMENT

During the Collaborative law process, the Mediator shall not provide services outside the scope of the engagement to either client, nor shall the Mediator solicit or engage in the provision of any services, at any time, in violation of the ACR Model Standards of Conduct for Mediators.

CHAPTER 6 WITHDRAWAL

The Mediator shall comply with the ACR Model Standards of Conduct for Mediators in withdrawing from any engagement in the Collaborative law process, and in communicating about any withdrawal from any engagement in the Collaborative law process.

APPROVAL AND ADOPTION

Draft Protocols of Practice for the AKACP were made available to the general membership of the AKACP via a Yahoo! Groups LISTSERV posting on April 17, 2014.

Members were urged to use these protocols over the following twelve months and to provide the drafting committee with comments and suggestions. Based upon input received, the drafting committee made some changes and the Protocols were formally adopted at the quarterly meeting held on November 18, 2015.

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