



ADDENDUM TO COLLABORATIVE RETAINER AGREEMENT **INFORMED CONSENT AND NOTICE OF** **LITIGATION PROCEDURES**

There are real differences in the methods used by attorneys to help couples and parents work through family law matters. In the Collaborative Process attorneys limit their representation to working within the Collaborative Process model and will withdraw if clients choose to end that process and transfer to a litigation or court-ordered process. Clients who enter the Collaborative Process must be made aware of these differences so they can make an informed decision about their legal rights and what form of legal representation is best for them. The following discussion highlights the differences between the Collaborative Process and the litigation process. The discussion is not exhaustive however; if you have any questions or do not fully understand the differences between the two processes, you are encouraged to ask your attorney for more information.

EXCHANGE OF INFORMATION **DISCOVERY OF ASSETS, LIABILITIES, INCOME** **AND ALL OTHER INFORMATION**

In every case of divorce, legal separation, custody/parenting time, or other family law matter, clients must have reliable information concerning assets, liabilities, sources of income and other issues, which are important to their case. Attorneys have a duty to assemble that information on behalf of the client.

The Collaborative Process relies on the voluntary cooperation of each person in the process for the exchange of the information. The information may be verified by the use of a sworn statement of income, assets and liabilities affirming that all information has been disclosed.

If there is a question whether any party in the process would lie on a sworn statement of income, assets and liabilities, or if a party would be unwilling to sign authorization forms which would allow an attorney to contact the holder of documents needed to confirm statements by a client, then a litigation or court-ordered process may be a better alternative in that case.

The methods and timeframe for collection of information in both processes are:

<u>Litigation/Court-Ordered Process</u>	<u>Collaborative Process</u>
Interrogatories (answered with sworn statements)	Informal conversation during which any question may be asked and all information is provided voluntarily.
Demand for Production of Documents or Things, and/or authorization forms for release of information.	Informal exchange of all documents related to the topics to be decided, whether or not requested by the other party or attorney. Voluntary exchange of authorization forms.
Depositions (sworn testimony taken before a court reporter)	
A Court Rule imposes a time limit of thirty days to answer Interrogatories and Request for Production of Documents.	The clients agree upon a time line for the exchange of information.
In the event a party does not provide the information within the time period provided by the Court Rule, the requesting party may request the assistance of the Court to Order the other party to answer the discovery requests.	If an attorney knows that a client is not providing relevant information and cannot obtain the client's consent to disclose the information, the attorney must withdraw as the Collaborative attorney.

Use of an informal discovery process, as compared to the formal discovery process of the litigation model, has several advantages: Document production is tailored to clients' cases and the specific issues identified for resolution; thus, it is typically less burdensome, less costly, less time-consuming and less invasive of clients' privacy than the formal discovery process.

The risk to be considered in either process is that not all information will be forthcoming or accurate. In the litigation process, the courts' enforcement powers can be invoked in such circumstances. No enforcement mechanism exists in the Collaborative

Process. If this is a concern, clients should carefully consider the options available under each process for securing reliable information and discuss them with their attorney before choosing a process.

COURT APPEARANCES

Attorneys who sign a Participation Agreement in the Collaborative Process are hired as settlement counsel only and DO NOT make court appearances except in very limited circumstances as needed to obtain a judge’s signature on documents clients have signed and approved.

The following highlights the decision making process in the adversarial and in the Collaborative Model:

<u>LITIGATION</u>	<u>COLLABORATIVE PROCESS</u>
Initial Case Management Conference in Hennepin County – scheduled by the court and typically held within three weeks of filing the initial paperwork. This is a meeting with the Judicial Officer, the parties and the attorneys to discuss the unresolved issues and to develop a plan to resolve the issues.	First Joint Meeting- scheduled by the attorneys and parties and typically held soon after each party hires a Collaborative Process attorney. At this meeting the team assists parties with identifying their goals, interests and needs; the legal issues to be resolved; and the information to be gathered. Often there is also a discussion regarding the use of mental health and financial professionals, and/or a mediator to assist parties with making well-informed decisions for themselves and their children.
Temporary Hearing – requested by one party and held at a time available for the Court. Establishes temporary custody and parenting time, interim obligations for financial support, occupancy of the marital residence during the proceeding, and any other interim issues. Issues are resolved by judicial decision.	Temporary or interim issues are addressed at the first joint meeting, resolved by agreement, and reduced to writing if so desired by the parties. Separation plans may be drafted as well to assist the parties in making orderly transitions during the divorce process.
Emergency Hearings – requested by one party and held promptly if the party has an urgent issue that the court regards as needing immediate attention. Issues are resolved by judicial decision.	Emergency Issues – when an issue arises that needs immediate attention, the professionals talk by conference call or schedule a meeting with clients to resolve the issue. All team members who might have information relevant to the issue assist in resolving the emergency issue.

Domestic Abuse Hearings – held within one-two weeks of filing when either party alleges s/he or a child is a victim of domestic abuse. The Judge may issue an Order for Protection.	Collaborative attorneys who have signed a Participation Agreement do not make court appearances at contested Domestic Abuse hearings.
Pre-Trial/Settlement Conferences – establishes issues in dispute and a trial schedule	
Trial – scheduled by court. All issues resolved by judicial decision	Legal issues and matters impacting resolution of issues (such as communication skills between parties) are addressed in one or more meetings involving clients and attorneys and clients and various other combination of professionals, if any, who are part of the team. Clients and professionals schedule meetings at times that are convenient to all taking into account the needs of the parties and their children. An interest-based negotiating framework is used to resolve legal issues by agreement. Decisions are made by the clients.
Post Trial Motions. Requested by a party and scheduled by court. Issues resolved by judicial decision.	Post-decree issues. Clients generally return to the Collaborative process, or other alternative dispute resolution process to resolve issues without court intervention.

Because representation in the Collaborative Process is focused on settlement only, the professionals on the case are able to devote all of their time and energy to assisting parties with identifying their interests, needs and goals; analyzing relevant information; and finding solutions tailored to the parties and their children. In the litigation process, lawyers’ time is often devoted to a formal exchange of information, court preparation, and court appearances.

The risk of the collaborative process is that clients do not have the hand of the Court to impose solutions. The risk of the litigation process is that clients may not be satisfied with judge’s decisions at temporary hearings or trials.

NOTE ON DOMESTIC ABUSE AND CHILD ABUSE ISSUES.

Attorneys in the Collaborative Process cannot make court appearances in cases which proceed to court hearings on issues of child or spousal abuse. Collaborative Child

Specialists and Coaches are licensed mental health practitioners who must report discovered child abuse to legal authorities, pursuant to Minnesota statutory law. The terms of the Participation Agreement signed by clients and their Collaborative attorneys provide that the collaborative process ends at the time of discovered child abuse.

WITHDRAWAL

By retaining a Collaborative attorney and having him/her sign a Collaborative Participation Agreement, the client agrees that his or her attorney will represent the client for the purpose of settlement only. A Collaborative attorney will not represent the client if either participant decides to go to Court to have the issues resolved. If either party does proceed to court both attorneys must withdraw from the case. If the Collaborative attorneys withdraw, there is a thirty-day waiting period before either party may appear in court unless good cause is shown to shorten this period. This is to allow each party time to hire a new attorney and prepare for the litigation process.

In the process of conventional representation, or litigation, attorneys may work on traditional methods of negotiation at the same time they prepare their case for trial. There is no waiting period for clients who wish to change attorneys during the conventional process. The case remains scheduled for a hearing or trial as established by the court, unless the client is able to obtain a continuance of the court date.

ACKNOWLEDGEMENT

I have had the opportunity to review the above description of the differences between the Collaborative Process and litigation, ask any questions I may have regarding the differences between the two processes and discuss the advantages and disadvantages of each process as applied to my individual circumstances. I understand and acknowledge that I am making an informed decision to choose the Collaborative Process for my divorce and to limit my attorney's representation of me as a result of that choice.

Dated: _____
Client