

**Collaborative Law:
Bringing the Most Difficult
Cases to Resolution the
Collaborative Way**

Elaine S. Buck, JD
Amy Armstrong, LISW



Introduction

- Brief history of Collaborative Law
- Ohio Code of Professional Conduct
- Ohio Collaborative Family Law Act of 2013 (OCFLA)
 - Participation agreement
 - Full and complete disclosure
 - Disqualification requirement
 - Review of options
 - Confidentiality and privilege



The Collaborative Process

- Client selects the process
- Assemble the team of professionals
- Identify cost considerations
- Collect financial information (financial neutral)
- Gather family and social-emotional information (coach)
- Solicit goals and interests of the parties



Goals and Interests



The Orange Story

A husband and wife went to court, and were equally disappointed when they each walked away with 1/2 of the "orange." If only we had asked their goals and interests ... the husband would have what he wanted – all the pulp to make juice – and the wife would have what she wanted – all the peel to make potpourri.



The Collaborative Process, continued

- Provide legal backdrop for decision-making
- Consider options for decision making
- Evaluate options
- Bring case to resolution
- Draft and file documents



The Three "T"s

- Training
- Team
- Trust the Process



Training

- Formal training, initial and on-going
 - Interdisciplinary Introductory Training
 - Mediation Training
 - Advanced Training
 - International Association of Collaborative Professionals Annual Forum



Ongoing Learning

- Debrief and prebrief meetings with professional team
- Final case debrief with professional team
- Monthly gatherings and exchange of ideas with local practice group
- Discussion of standards of practice
- Use of protocols and form documents



Team

- Attorneys trained in Collaborative Practice
- Financial divorce specialist as neutral financial professional
- Mental health professional as neutral family coach
- Allied professionals – real estate appraisers, career consultants, vocational assessors, business valuation experts, etc.
- Mental health professional as child specialist



Teamwork, continued

- Paradigm shift: from legal advocacy to legal support plus a focus on parties' identified goals and interests
- Full transparency
- Continual trust and communications among professionals



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Dispute Resolution
CONFERENCE

Trust the Process

- Vulnerability – open to GIVE and RECEIVE feedback
- Willingness to grow and learn
- Willingness to speak up OR stay quiet
- Self-awareness of power in the room
- Detachment from specific outcomes
- On-going support of the clients' goals and interests



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Techniques for Difficult Cases

- Stick to agenda – cut meetings short rather than get derailed
- Each meeting – include immediate issues, homework, next meeting dates
- Room set-up – possibly stagger clients, offer food, flip charts
- Timing – take required breaks to check in
- Provide sensory supports
- Name the “elephant in the room”



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Techniques, continued

- Don't caucus too quickly
- Caucus with professionals
- Keep severity of their psychological stress in mind
- Be mindful of the tone in the room
- Cancel meetings rather than have meetings without proper completion of homework and time for the financial neutral to integrate new information into reports



Techniques, continued

- Coach (and others) reminds team of triggers and relational patterns; how can we bring out the best in each client?
- Debrief team members' experience as well as client triggers
- Be mindful of trauma responses



Questions?



Contact Information

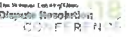
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Supporting the Public
Dispute Resolution 18
CONFERENCE

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Ohio Collaborative Family Law Act

ORC 3105.40 to 3105.54

3105.41 Definitions for sections 3105.41 to 3105.54.

As used in sections 3105.41 to 3105.54 of the Revised Code:

(A) "Collaborative family law communication" means any statement that occurs after the parties sign a collaborative family law participation agreement and before the collaborative family law process is concluded and that is made for the purpose of conducting, participating in, continuing, or reconvening a collaborative law process.

(B) "Collaborative family law participation agreement" means an agreement by persons to participate in a collaborative family law process.

(C) "Collaborative family law process" means a procedure intended to resolve a matter without intervention by a court in which parties sign a collaborative family law participation agreement and are represented by collaborative family lawyers.

(D) "Collaborative family lawyer" means a lawyer who represents a party in a collaborative family law process but does not include a lawyer who is a public official and who does not represent individuals other than public officials in their official capacities.

(E) "Collaborative matter" or "matter" means a dispute, transaction, claim, problem, or issue for resolution that arises under Title XXXI of the Revised Code and is described in a collaborative family law participation agreement. The term includes a dispute, claim, or issue in a proceeding.

(F) "Family or household member" has the same meaning as in section 3113.31 of the Revised Code.

(G) "Law firm" means an association of lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or other association, lawyers employed in a legal services organization, the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(H) "Nonparty participant" means a person, other than a party and the party's collaborative family lawyer, that the parties expressly designate in writing, in a collaborative family law participation agreement or an amendment to that agreement, to participate in a collaborative family law process.

(I) "Party" means a person that signs a collaborative family law participation agreement and whose consent is necessary to resolve a matter.

(J) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(K) "Proceeding" means a judicial, administrative, arbitral, or other adjudicative process before a court, including related prehearing and posthearing motions, conferences, and discovery.

(L) "Public official" means an officer or employee of the state or any political subdivision of the state.

(M) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(N) "Related to a collaborative family law matter" or "related to a matter" means involving the same parties, transaction or occurrence, nucleus of operative fact, claim, issue, or dispute as a matter.

(O) "Sign" means, with present intent to authenticate or adopt a record, to do either of the following:

(1) Execute or adopt a tangible symbol;

(2) Attach to or logically associate with the record an electronic symbol, sound, or process.

3105.42 Laws applicable to collaborative family law participation agreement.

(A) Sections 3105.41 to 3105.54 of the Revised Code apply to a collaborative family law participation agreement that meets the requirements of section 3105.43 of the Revised Code and is signed on or after the effective date of this section.

(B) A court may not order a party to participate in a collaborative family law process over that party's objection.

3105.43 Collaborative family law participation agreements; mandatory inclusions.

(A) A collaborative family law participation agreement must be in a record, be signed by the parties, and include all of the following:

(1) A statement of the parties' intent to resolve a matter through a collaborative family law process under sections 3105.41 to 3105.55 of the Revised Code;

(2) A description of the nature and scope of the matter;

(3) The identity of the collaborative family lawyer who represents each party in the collaborative family law process;

(4) A statement by each collaborative family lawyer confirming the lawyer's representation of a party in the collaborative family law process.

(B) Parties to a collaborative family law participation agreement may agree to include additional provisions not inconsistent with sections 3105.41 to 3105.54 of the Revised Code.

3105.44 Collaborative family law process.

(A) A collaborative family law process begins when the parties sign a collaborative family law participation agreement.

(B) A collaborative family law process is concluded by any of the following:

(1) A negotiated resolution of the matter as evidenced by a signed record;

(2) A negotiated resolution of a portion of the matter as evidenced by a signed record in which the parties agree that the remaining portions of the matter will not be resolved in the collaborative family law process;

(3) Termination of the process under division (C) of this section.

(C) A collaborative family law process terminates when any of the following occurs:

(1) A party gives notice in a record that the collaborative family law process is ended.

(2) A party does either of the following:

(a) Begins a proceeding related to the collaborative family law matter without the agreement of all parties;

(b) In a pending proceeding related to the collaborative family law matter, does any of the following:

(i) Initiates a pleading, motion, order to show cause, or request for a conference with the court;

(ii) Requests that the proceeding be put on the court's docket;

(iii) Takes similar action requiring notice to be sent to the parties;

(iv) Except as otherwise provided by division (E)(2) of this section, discharges a collaborative family lawyer.

(3) A collaborative family lawyer withdraws from further representation of a party.

(4) Termination occurs in any other way provided for in the collaborative family law participation agreement.

(D) A party may terminate a collaborative family law process with or without cause. A notice of termination need not specify a reason for terminating the process.

(E)

(1) A collaborative family lawyer who is discharged or who withdraws shall give prompt notice in a record of the discharge or withdrawal to all other parties.

(2) Notwithstanding the discharge or withdrawal of a collaborative family lawyer, a collaborative family law process continues if the unrepresented party engages a successor collaborative family lawyer, and, in a signed record, all parties consent to continue the process by reaffirming the collaborative family law participation agreement, the collaborative family law participation agreement is amended to identify the successor collaborative family lawyer, and the successor collaborative family lawyer confirms the lawyer's representation of a party in the collaborative family law process.

(F) A collaborative family law process does not terminate if, with the consent of all parties, a party requests a court to approve a negotiated resolution of the matter or any portion of the matter as evidenced by a signed record.

3105.45 Representation by collaborative family lawyer.

(A) Except as otherwise provided in division (C) of this section, a collaborative family lawyer may not appear before a court to represent a party in a proceeding related to the collaborative family law matter. A collaborative family lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality is subject to disqualification under this division.

(B) Except as otherwise provided in division (C) of this section, a lawyer in a law firm with which the collaborative family lawyer is associated may not appear before a court to represent a party in a proceeding related to the collaborative family law matter if the collaborative family lawyer is disqualified from doing so under division (A) of this section.

(C) A collaborative family lawyer or a lawyer in a law firm with which the collaborative family lawyer is associated may represent a party for the following purposes:

(1) To ask a court to approve an agreement resulting from the collaborative family law process;

(2) To seek or defend an emergency order to protect the health, safety, welfare, or interests of a party or of a family or household member of a party if a successor lawyer is not immediately available to represent the party or family or household member of the party. If a successor lawyer is not immediately available to represent the party or family or household member of the party, divisions (A) and (B) of this section do not apply until a successor lawyer assumes representation of the party or family or household member of the party or reasonable measures are taken to protect the health, safety, welfare, or interests of the party or family or household member of the party.

3105.46 Informal disclosure of information.

During the collaborative family law process, at the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery and shall update promptly information that has materially changed. Parties may define the scope of disclosure, except as otherwise provided by law.

3105.47 Applicability of professional responsibility provisions.

Sections [3105.41](#) to [3105.54](#) of the Revised Code do not affect the professional responsibility obligations and standards applicable to a lawyer or other licensed professional or the statutory obligation of a person to report abuse or neglect of a child or adult.

3105.48 Confidentiality of communications.

A collaborative family law communication is confidential to the extent agreed by the parties in a signed record or as provided by the law of this state.

3105.49 Privileged communications.

(A) Subject to sections [3105.50](#) and [3105.51](#) of the Revised Code, a collaborative family law communication is privileged under division (B) of this section, is not subject to discovery, and is not admissible in evidence.

(B) In a proceeding, the following privileges apply:

(1) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative family law communication.

(2) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative family law communication of the nonparty participant.

(C) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a collaborative family law process.

3105.50 Waiver of privileges.

(A) A privilege under section 3105.49 of the Revised Code may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(B) A person that discloses or makes a representation about a collaborative family law communication that prejudices another person in a proceeding may not assert a privilege under section 3105.49 of the Revised Code relating to that communication.

3105.51 Communications not subject to privilege.

(A) There is no privilege under section 3105.49 of the Revised Code for a collaborative family law communication that is any of the following:

(1) Available to the public under section 149.43 of the Revised Code or made during a session of a collaborative family law process that is open, or is required by law to be open, to the public;

(2) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(3) Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity;

(4) In an agreement resulting from the collaborative family law process, evidenced by a record signed by all parties to the agreement.

(B) The privileges under section 3105.49 of the Revised Code for a collaborative family law communication do not apply to the extent that a communication is either of the following:

(1) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative family law process;

(2) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child, unless a children's or protective service agency or an adult protective services agency is a party to or otherwise participates in the collaborative family law process.

(C) There is no privilege under section 3105.49 of the Revised Code if the communication is sought in connection with or offered in any criminal proceeding involving a felony, a delinquent child proceeding based on what would be a felony if committed by an adult, or a proceeding initiated by the state or a child protection agency in which it is alleged that a child is an abused, neglected, or dependent child.

(D) There is no privilege under section 3105.49 of the Revised Code if a court finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative family law communication is sought or offered in a criminal action or in a proceeding seeking rescission or reformation of a contract arising out of the collaborative family law process or in which a defense to avoid liability on the contract is asserted.

(E) If a collaborative family law communication is subject to an exception under division (B), (C), or (D) of this section, only the portion of the communication necessary for the application of the exception may be disclosed or admitted.

(F) Disclosure or admission of evidence excepted from the privilege under division (B), (C), or (D) of this section does not render the evidence or any other collaborative family law communication discoverable or admissible for any other purpose.

(G) The privileges under section 3105.49 of the Revised Code do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative family law process is not privileged. This division does not apply to a collaborative family law communication made by a person that did not receive actual notice of the agreement before the communication was made.

3105.52 Effect of finding of intent to make an agreement.

Even though a collaborative family law participation agreement fails to meet the requirements of section 3105.43 of the Revised Code, a court may find that the parties intended to enter into a collaborative family law participation agreement if the parties signed a record indicating an intention to enter into a collaborative family law participation agreement and the parties reasonably believed they were participating in a collaborative family law process. If a court makes such a finding, sections 3105.41 to 3105.54 of the Revised Code apply to the same extent as if the parties had entered into a valid collaborative family law participation agreement.

3105.53 Electronic signatures.

Sections 3105.41 to 3105.54 of the Revised Code modify, limit, and supersede the "Electronic Signatures in Global and National Commerce Act," 114 Stat. 464, 15 U.S.C. 7001, et seq., but do not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize

electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

3105.54 Short title.

Sections 3105.41 to 3105.54 of the Revised Code may be cited as the "Ohio collaborative family law act."

Added by 129th General Assembly File No.185, HB 461, §1, eff. 3/22/2013.

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Thompson E. Buck

*OSBA Family Relations Law Certified Specialist

Date

Name of Husband
Address

Name of Wife
Address

Re: _____ Collaborative Law Matter

Dear _____ and _____:

We look forward to representing you in this Collaborative case. Please find attached the Collaborative Family Law Participation Agreement with Addenda Nos. 1-4. This basic contract that will govern our Collaborative Process.

This Agreement and the Addenda are usually signed at the *first joint meeting* after we review the Agreement and Addenda in that joint meeting. However, this Agreement and the Addenda may be signed prior to the first joint meeting, if you understand the Agreement and Addenda and you wish to commence working with the family coach and financial neutrals, Amy Armstrong and Susan Moussi, prior to the first joint meeting. Our understanding is that you would like the neutral experts to commence their work as soon as feasible, and before the first joint meeting if possible, to be as efficient as possible, so this means the Agreement and the Addenda would need to be signed by each of you.

We want to be certain you understand the Agreement and the Addenda, and you may have questions concerning these. We will highlight a few key provisions:

- This is a very transparent process, where all financial and relevant information is voluntarily disclosed.

- You have alternatives to the Collaborative Process, which are set forth on the Addendum No. 1. Each alternative may have possible benefits and possible risks.
- You are electing the Collaborative Process after considering the alternatives available.
- Discussions regarding settlement terms should occur in the joint meetings. If any discussion is to occur outside of the joint meeting, it must be agreed upon by the parties and their lawyers before the discussion between the parties occurs.
- The professionals on the team (being your lawyers, the financial neutral and the neutral coach) will communicate amongst themselves throughout this matter, and they will exchange case information outside of the joint meetings. This is always with the objective of how we, the professional team, can best assist the parties in moving forward and reaching a final and complete resolution.
- The final agreed upon terms will be set forth in a Separation Agreement and also (usually) a Shared Parenting Plan. These are then filed with the Court, and these are incorporated into final Court Decrees after a final hearing (usually a private hearing with a private judge). Sometimes there is an interim agreement reached, called an “Agreement To Be Relied Upon” and if this is reached, this agreement is intended to be legally enforceable by a court whether there is or is not a final agreement reached.
- We do not go to Court to file anything until the entire agreement is reached.
- You voluntarily enter this process, and yes, you can voluntarily leave this process, but if either party leaves, there must be notice and 30 days before any court action is taken (unless here is an emergency) which is to give the other party time to retain new counsel. If there is contested divorce litigation, none of the professionals in this process would be involved in the subsequent contested matter.
- You are committing to maintain the financial status quo of the marital estate, until there is an agreement—e.g., no selling of assets, etc. (see top of page 4 of the Agreement).
- Yes, you give up certain rights (to formal discovery, to have court value each item of your property, to have a court divide your marital property, to have a court decide



spousal support, etc.), but you commit to full disclosure, and the two of you, not a court, will make all of the decisions that will affect you and your family.

Should you have any questions, please do not hesitate to contact us. Many thanks for retaining us for this Collaborative Process.

Very truly yours,

_____ and _____
(Attorneys for both parties)

Enclosures



Checklist of Steps To Final Agreement

There are several important steps that we must go through. Use this checklist to track the progress made and as a preview of the steps still needed to reach finalization.

_____ **Financial Disclosure**

- _____ Gathering of initial financial information
- _____ Meeting with Financial Neutral to verify completeness of financial information provided, answer clients' questions about the family's finances, and to review reports and illustrations that will be used in the process
 - _____ Assets and liabilities
 - _____ Earnings
- _____ Identify any assets that may require additional expert valuation
- _____ Identify historical components of earnings for each client
- _____ Gathering of additional financial information
- _____ Develop future-looking budgets for the two separate households

_____ **Identification and Discussion of Each Party's Interests and Goals**

- _____ Work with Communications Neutral to develop interests/goals
- _____ Share interests/goals at First Joint Meeting
- _____ Add to or change interests/goals as needed

_____ **Generate Options and Alternatives (Brainstorming) for Allocating Assets and Debts**

- _____ List out all possible options for meeting each goal/interest without evaluating
- _____ Eliminate options that are clearly not acceptable by one or both clients
- _____ Evaluate remaining options for meeting goals/interests of both clients
- _____ Repeat steps for all assets and liabilities as needed

_____ **Reach Agreement on Terms Re Allocation/Distribution of Marital Assets and Debts**

- _____ Identify assets to sell
- _____ Identify assets and debts each client will keep
- _____ Agreement reached as to any property settlement payment and terms of payment

_____ **Brainstorming options and reviewing alternative illustrations for Support**

- _____ List out all possible options for meeting each goal/interest without evaluating
- _____ Eliminate options that are clearly not acceptable by one or both clients
- _____ Evaluate remaining options for meeting goals/interests of both clients
- _____ Repeat steps for support as needed

_____ **Reach Agreement on Terms Re Spousal Support**

- _____ Amount
- _____ Period of time
- _____ Other terms:
 - _____ Modifiable/non-modifiable
 - _____ Factors that reduce/terminate
 - _____ Impact of future change in circumstances

Checklist of Steps To Final Agreement

_____ **Reach Agreement on Terms for Shared Parenting**

- _____ Time allocation during the year
- _____ Time allocation for holidays
- _____ Child support
- _____ Paying of child-related expenses
- _____ Other terms to go into Shared Parenting Plan
- _____ Terms re Adult Children that may not go into Shared Parenting Plan

_____ **Preparation of Court documents**

- _____ Separation Agreement
- _____ Shared Parenting Plan
- _____ Financial Affidavits
- _____ Dissolution Petition, etc.
- _____ Client approval of documents
- _____ Client signing of documents

_____ **Filing/E-filing with court**

_____ **Private hearing with private judge**

COLLABORATIVE FAMILY LAW PARTICIPATION AGREEMENT

PURPOSE

_____ and _____ (hereinafter sometimes referred to as “the parties”) have chosen to use the principles of the Collaborative Family Law Process to settle the collaborative matters arising under Sections 3105.41 to 3105.55 of the Ohio Revised Code. The primary goal of the parties in this Collaborative Family Law Process is to settle in a non-adversarial manner the collaborative matters arising from the parties’ separation and/or dissolution of their marriage/domestic partnership, and/or the restructuring of their family. The parties have retained collaborative family lawyers who agree to use the principles of the Collaborative Family Law Process and Principled Negotiation to assist them in reaching this goal. Wife, _____, shall be represented by Attorney _____, and Husband, _____, shall be represented by Attorney _____.

The parties also agree that their collaborative family lawyers have explained to them the following additional types of optional dispute resolution processes that are available to the parties for the restructuring of their family and marital relationships: pro se party to party negotiation, mediation, early neutral evaluation, arbitration, non-collaborative negotiations through separate attorneys, and adversarial litigation through the court system, and the parties have initialed and signed Addendum No. 1 attached hereto. After thoughtful consideration, the parties and their collaborative family lawyers agree that the Collaborative Family Law Process will be the best option for the parties to pursue for their mutual benefit.

COLLABORATIVE FAMILY LAW COMMUNICATIONS

The parties and their collaborative family lawyers intend to communicate effectively with each other to settle efficiently the collaborative matters described above. Written and verbal collaborative family law communications will be respectful and constructive and will not make accusations or claims not based in fact.

It is agreed that all such communications during settlement meetings will be focused on the financial and parenting matters (if applicable) in the dissolution and the constructive resolution of those matters. The parties and their collaborative family lawyers understand that the costs for settlement meetings are substantial and require everyone’s cooperation to make the best possible use of available resources. To achieve this goal, the parties agree not to engage in unnecessary discussions of past events.

To maintain an objective and constructive settlement process, the parties agree to negotiate resolution of their collaborative family matters only in the settlement conference setting. Discussions outside of the conference setting must be agreed to by the parties and their collaborative family lawyers.

Settlement issues will not be discussed in the presence of the parties’ child(ren), or at unannounced times by telephone calls or appearances at the other party’s residence. The parties acknowledge that inappropriate communications regarding their collaborative family matters can be harmful to their children. Communication with the children regarding these issues will occur only if it is appropriate and done by mutual agreement. The parties specifically agree that their children will not be included in any discussion regarding the collaborative family matters, except as described in this Agreement.

The parties agree that all collaborative family law communications made during any settlement meeting are intended to be taken as being in furtherance of settlement, and therefore, not admissible as evidence in court. In addition, as provided in Sections 3105.49 through 3105.51 of the Revised Code, a

collaborative family law communication is privileged, is not subject to discovery, and is not admissible in evidence.

**CONFIDENTIALITY AND CONSENT TO EXCHANGE OF INFORMATION AMONG
COLLABORATIVE FAMILY LAW PROCESS TEAM MEMBERS**

A collaborative family law communication is confidential to the extent agreed by the parties in this Collaborative Family Law Process Agreement, or as provided by the law of this state (see Section 3105.48 of the Revised Code).

The parties request and authorize our respective collaborative family lawyers and other nonparty participant expert team members to exchange our Collaborative Family Law Process case information with each other to better facilitate our Collaborative Family Law Process. We understand that the transmission and exchange of information among our Collaborative Family Law Process team members may occur in oral, written or electronic form. Further, neither party shall call either collaborative family lawyer as a witness should either or both parties resort to litigation. Consistent with the foregoing, the parties hereto have also signed an Addendum to this Collaborative Family Law Participation Agreement, a copy of which is attached hereto, as Addendum No.2. This Addendum shall be initialed by the parties whenever nonparty participant experts are retained by the parties and are therefore added to the Collaborative Family Law Process Team subsequent to the signing of this Agreement.

NONPARTY PARTICIPANT EXPERTS

When appropriate and needed, the parties will use nonparty participant neutral experts for purposes of valuation, cash flow analysis, parenting issues and any other matter which requires expert advice and/or recommendations. By mutual agreement, the parties may together seek the advice of a neutral collaborative child specialist. The parties will agree in advance as to how the costs of the neutral expert will be paid. The name and terms of any nonparty participant third-party expert retained by the parties at the time of, or subsequent to, the signing of this Agreement shall be incorporated herein by the addition of the name and role in Addendum No. 2 to this Collaborative Family Law Process Participation Agreement, plus any additional Addendum that may be necessary to define the role and terms of the arrangement. If the parties resort to litigation, neither party may call any such nonparty participant neutral expert, who has participated in this collaborative family law process, as a witness in court, and the expert's report may not be submitted to the court.

INFORMATION

The parties and their collaborative family lawyers agree to deal with each other in good faith to promptly provide all necessary and reasonable records and other information requested. No formal discovery procedures (e.g. depositions, interrogatories, document requests, requests for admissions) will be used during the Collaborative Family Law Process.

The parties acknowledge that by using informal discovery, they are giving up certain investigative procedures and methods that would be available to them in the litigation process. They give up these measures with the specific understanding that both parties shall make full and fair disclosure of all assets, income, debts and other information necessary for a fair settlement. Participation in the Collaborative Family Law Process, and the settlement reached, is based upon the assumption that both parties have acted in good faith and have provided complete and accurate information to the best of their ability. The parties agree to sign a sworn statement making full and fair disclosure of their income, assets and debts.

ENFORCEABILITY OF AGREEMENT TO BE RELIED UPON

The parties may decide to enter into a written agreement captioned “Agreement To Be Relied Upon” during the collaborative family law process that they intend shall survive and be binding after the process terminates, even if the process fails. They understand that such a written agreement, referred to as an “Agreement To Be Relied Upon,” shall be signed by both of them during the collaborative family law process and shall be legally enforceable and shall survive the termination of the process. It may be presented to the court as a basis for an order, and the court may make it retroactive to the date of the written agreement. Similarly, once a final agreement addressing all collaborative matters is signed, such agreement is legally enforceable and may be presented to the court in a subsequent action.

ATTORNEY FEES AND EXPENSES

The parties acknowledge and agree that each party must have resources available for payment of collaborative family lawyer fees and related necessary expenses, including the fees and expenses of all nonparty participant experts and other collaborative family law process team members. The parties agree to make resources available for these purposes during the Collaborative Family Law Process.

LEGAL PROCESS

Court Proceedings: Unless otherwise agreed, or in the case of an emergency, prior to reaching final agreement on all issues, no Summons and Complaint will be served or filed, nor will any other motion or document be prepared or filed which would initiate court intervention unless otherwise agreed. When the parties have reached a final agreement, the parties will file jointly for a dissolution of marriage/domestic partnership. Alternatively, by agreement of the parties, they may file for a legal separation, or one party may file for an uncontested divorce. Neither party nor that party’s collaborative family lawyer will use court intervention during the Collaborative Family Law Process, unless it is mutually agreed, or in the case of an emergency.

Withdrawal from Collaborative Family Law Process: If a party decides to withdraw from the Collaborative Family Law Process, prompt written notice will be given to the other party through his or her collaborative family lawyer. Upon withdrawal from the Collaborative Family Law Process, there will be a thirty (30) day waiting period (unless there is an emergency) before any court hearing to permit the other party to retain another lawyer and make an orderly transition. All Agreements To Be Relied Upon, and any

other written temporary agreements, will remain in full force and effect during this period. The intent of this provision is to avoid surprise and prejudice to the rights of the other party. It is therefore mutually agreed that either party may bring this provision to the attention of the court in requesting a postponement of a hearing.

The parties understand and agree that, if either party withdraws from the Collaborative Family Law Process and the case proceeds to litigation, any attorney who has represented any party in this Collaborative Family Law Process, including any other attorney in the same firm, shall withdraw and shall not represent the party in the litigation process, as provided in Section 3105.45 of the Revised Code.

OTHER RIGHTS AND OBLIGATIONS PENDING SETTLEMENT

The parties understand that, without filing a court action, neither party is restrained by court order from any act. However, the parties agree to the following, until further written agreement by the parties:

(1) Neither party will harass, annoy, interfere with, harass by telephone, assault, or cause bodily harm to the other party.

(2) Neither party will sell, damage, destroy, remove, encumber, dispose of, lessen the value of, or in some manner hide any asset belonging to either or both of the parties.

(3) Neither party will change beneficiaries on any life insurance policies, fail to pay the premiums thereon, cancel or cash in said policies, or permit said policies to lapse, or otherwise change the status of said policies.

(4) Neither party will withdraw, spend, encumber, or dispose of funds deposited in financial institutions, including but not limited to bank accounts (except checking accounts), savings accounts, money markets, credit unions, pension plans, or certificates of deposit.

(5) Neither party will contract upon the other's credit in some manner, or incur any debt to which the other may be obligated.

(6) Neither party will relocate any of the parties' minor children from the county in which they now reside or to a location that would interfere with school attendance in their present school district.

(7) Neither party will conceal the whereabouts of any of their minor children during the pendency of the Collaborative Family Law Process.

ACKNOWLEDGMENT OF RIGHTS

The parties have chosen the Collaborative Family Law Process to reduce emotional and financial costs, and to generate a final agreement that addresses their needs and concerns. They agree to work in good faith to achieve these goals. The parties acknowledge that, by dissolving their marriage by agreement, they will be waiving the following rights that would otherwise be available to them through the litigation process:

(1) The right to formal discovery, including but not limited to discovery of assets and liabilities.

(2) The right to have each and every item of marital property valued and to have the court resolve any disputes between them with respect to valuation.

(3) The right to have a court divide the marital property in a manner that the court determines to be equitable under Ohio law.

(4) The right to have a court decide what is reasonable and appropriate in terms of a spousal support order.

(5) The right to have a court decide the allocation of parental rights and responsibilities for any child of this marriage.

TERMINATION OF COLLABORATIVE FAMILY LAW PROCESS

This Collaborative Family Law Process shall terminate upon the occurrence of any event listed in Section 3105.44 of the Ohio Revised Code.

STAY OF DIVORCE PROCEEDINGS

The parties both agree that they will promptly instruct their litigation counsel to stay the pending divorce proceedings for a period of ninety (90) days in favor of pursuing the Collaborative Process.

By signing below, both parties acknowledge that they have read and received a copy of this Agreement, and they agree to abide by its terms.

_____	_____
SIGNATURE OF HUSBAND	DATE OF SIGNATURE
_____	_____
SIGNATURE OF WIFE	DATE OF SIGNATURE

ACKNOWLEDGEMENT OF LEGAL REPRESENTATION OF PARTIES:

I, _____, confirm that I will represent _____, in the Collaborative Family Law Process hereunder:

_____	_____
Signature of Lawyer	Date of Signature

I, _____, confirm that I will represent _____, in the Collaborative Family Law Process hereunder:

_____	_____
Signature of Lawyer	Date of Signature

**ADDENDUM NO. 1 TO COLLABORATIVE FAMILY LAW PARTICIPATION AGREEMENT
ACKNOWLEDGMENT OF INFORMED CONSENT**

The persons designated as Wife and Husband below have individually and collectively decided to enter into a collaborative family law participation agreement. In doing so, Wife and Husband have individually and collectively determined that it is in their best interest to avoid litigation and to utilize a collaborative family law process as their alternative dispute resolution process of choice.

Both Wife and Husband acknowledge that, prior to entering into a collaborative family law participation agreement, she/he has individually received, from her or his own collaborative family lawyer of choice, information concerning the possible risks and possible benefits of litigation and each alternative dispute resolution process available. Each party hereby acknowledges the following summary to be consistent with her or his understanding of the options available and some of the possible risks and benefits associated with each option:

 H I. LITIGATION
 W

A. Possible benefits may include:

1. The court can issue temporary orders restraining, among other things, the wrongful dissipation of assets, generally on an immediate basis.
2. The court can issue other temporary orders, regarding matters such as parenting rights and support obligations, although such orders may take weeks or months.
3. The court can enforce the discovery of necessary information and may impose sanctions for failure to comply with the discovery process.
4. If any issues are not ultimately settled, the court will hear evidence at a trial, apply whatever mandates are prescribed by the law, and then make a decision disposing of all remaining disputes.

B. Possible risks may include:

1. Adversarial process, in a non-private forum, and position-based bargaining increase relational costs (i.e., increase likelihood of long-term impairment of the parties' ability to directly communicate and interact with each other in a dignified, effective manner).
2. Increased conflict between the parties increases the negative impact upon their children.
3. The parties cede control in favor of the court making decisions for them, which decisions are necessarily made from a more limited, non-customized set of options, after consideration of only the information that is admissible under technical rules of evidence, and often neither party emerges as a clear winner.
4. The time consumed by, and resulting legal fees involved in, pursuing formal discovery proceedings, temporary order contests, trial and possible appellate court proceedings can take a substantial toll, emotionally and financially, upon both parties.

 H II. ARBITRATION
 W

A. Possible benefits may include:

1. Unlike litigation, a third party lawyer is selected and hired to act as a private judge, so that the case can be heard in a private forum and on a time scheduled determined by the parties.
2. The scope of an arbitrator's powers and role is determined by the parties' agreement to utilize arbitration. An arbitrated decision may be binding on the parties.

B. Possible risks may include:

1. The allocation of parenting time and responsibilities cannot be absolutely determined by an arbitrator, meaning that court intervention will still be required on these issues if they are not settled by agreement.
2. Arbitration utilizes the adversarial process, like litigation, and therefore many of the same risks of litigation (increased relational costs, ceding control over decision-making, etc.) still apply.

 H III. MEDIATION
 W

A. Possible benefits may include:

1. A third party neutral facilitates resolution by direct, face-to-face negotiations between the parties.
2. Parties retain control over decision making so that each party's needs and interests, along with a wider variety of options, are generally given consideration, not just the evidence and the laws as in adversarial processes such as litigation or arbitration.
3. As opposed to litigation or arbitration, it is a process that can more effectively address the interpersonal issues that can obstruct resolution.

B. Possible risks may include:

1. The neutral mediator cannot individually counsel either party or do much to level unequal bargaining positions between parties.
2. The neutral mediator is limited in his/her ability to facilitate the discovery of necessary information in the face of one party's obstructive behavior.
3. Since the parties' lawyers generally do not participate directly in the negotiations, the lawyers remain unaligned with the process, resulting in a greater risk that the mediated agreement may be scuttled when each party receives her or his lawyer's critique.

 H **IV. EARLY NEUTRAL EVALUATION**
 W

A. Possible benefits may include:

1. Parties retain an experienced family lawyer to act as a neutral educator, consultant and evaluator to assist them in exploring the range of options and creative solutions that might be available for their consideration.
2. Neutral Evaluator guides the parties through a checklist of subjects that should be discussed and included within a separation agreement and shared parenting plan. Neutral Evaluator may use mediation techniques and skills to facilitate problem solving discussions between parties, and, in the event of an impasse, the Neutral Evaluator is authorized by the parties to give them a non-binding advisory opinion on a solution that the Evaluator believes would be reasonable and appropriate considering the particular circumstances of the parties.
3. Neutral Evaluator does not render any individual, personal legal advice to either party, and does not draft any dissolution pleadings or other documents for the parties. At end of this process, parties are referred to collaborative lawyers for personal advice and drafting of any necessary documents. However, in most cases, the total time and expense involved in completing the dissolution of marriage process can be reduced significantly by starting with early neutral evaluation.

B. Possible risks may include:

1. This option may not be appropriate or effective in cases where parties are in high conflict, or one party has a significant personality disorder.
2. Since the parties' lawyers generally do not participate directly in the negotiations, the lawyers remain unaligned with the process, resulting in a risk that any agreement may be scuttled when each party receives her or his lawyer's critique.

 H **V. NEGOTIATION WITHOUT A COLLABORATIVE FAMILY LAW PARTICIPATION AGREEMENT**
 W

A. Possible benefits may include:

1. Parties may choose to use interest-based or position-based bargaining, and negotiations can take place either in four-way meetings or between the lawyers.
2. Unlike a collaborative process, the lawyers are not retained for a limited purpose and each party can keep her or his same counsel to litigate unresolved issues.

B. Possible risks may include:

1. Unlike mediation or a collaborative process, protocols and processes are not as clearly defined, decreasing the likelihood of resolution and increasing the likelihood that a party will resort to litigation.
2. The possibility that the lawyers may at some point be adversaries in litigation can negatively impact the level of trust that may be necessary to resolve issues (especially in an interest-based negotiation) because, like in litigation, the attorneys are still simultaneously pursuing settlement and preparing for trial.

 H **VI. NEGOTIATION WITH A COLLABORATIVE FAMILY LAW PARTICIPATION AGREEMENT**

____W

A. Possible benefits may include:

1. Interest-based negotiations are utilized, similar to mediation, promoting the parties' long-term ability to effectively communicate and minimizing the negative impact upon children from the conflict.

2. All information is shared fully in a private forum, on request of either party, and all negotiations take place directly, face-to-face in "four-way" meetings in which an environment of trust is promoted by the knowledge that the other spouse's attorney will not some day be an adversary.

3. Each of the lawyers is retained for only the limited purpose of helping her or his client reach a reasonable, acceptable settlement on all issues, without litigation or threatening to litigate. This allows the lawyers to focus on creative solutions rather than preparation for trial.

4. In the event the collaborative process fails, it is still likely that the parties will have accomplished much of the discovery work efficiently, the parties will have their case information organized, and settlement options will have been explored.

B. Possible risks may include:

1. Like mediation, early neutral evaluation and negotiation without a collaborative agreement, each side has the unilateral right to terminate the process at any time and force the other party into litigation.

2. Unlike mediation, early neutral evaluation and negotiation without a collaborative agreement, if the collaborative process fails, neither lawyer can continue to represent her or his client and each client must retain new counsel for litigation, and it is possible that not all of the work done in the collaborative process will be of use in resolving the litigated case.

3. Each party may reach a point where she or he feels that there is no choice but to settle because of the investment she or he has already made in the process.

Wife and Husband have each placed her or his initials on the spaces above and have signed her or his name below to affirmatively indicate that she or he has carefully read this Acknowledgment of Informed Consent, that she or he has previously discussed the benefits and risks of each of the above options with her or his individual collaborative family lawyer before today, that the benefits and risks of each option listed above are consistent with her or his understanding, and that she or he has freely and voluntarily decided to enter into this collaborative family law participation agreement.

Signature of Husband

Date

Signature of Wife

Date

**ADDENDUM NO. 2 TO COLLABORATIVE FAMILY LAW PARTICIPATION AGREEMENT
EXCHANGE OF INFORMATION CONSENT FORM**

We, _____ and _____, request and authorize our respective collaborative family law process team members, as identified below, to exchange collaborative family law communications and other case information with each other and with such additional non-party participant professionals (experts) who may join the team. While this exchange of information is for the purpose of better facilitating our collaborative family law process, the exchange of all such information may be for any collaborative matter related in any way to our collaborative family law process. We understand that the transmission and exchange of any such information may occur in oral, written and electronic form. When such additional professionals (experts) join the team, subsequent to the initial date on which we have signed the Collaborative Family Law Participation Agreement and this Addendum, this Addendum shall be initialed by us, with the names of the additional non-party participant professionals (experts) added.

This consent will terminate on the effective date of the court order terminating our marriage, other final order (e.g. permanent legal separation) or other final agreement on our collaborative family matters, unless either one, or both, of us terminates this consent earlier, in which event we understand that in order to be an effective unilateral termination, the party who is terminating this Consent must give written notification to all who are on the collaborative family law process team, which notice may occur in electronic form.

Collaborative Family Lawyer for Husband: _____

Collaborative Family Lawyer for Wife: _____

Collaborative Family Coach (Neutral): _____

Collaborative Family Coach for Husband: _____

Collaborative Family Coach for Wife: _____

Collaborative Financial Neutral: _____

Collaborative Child Specialist (Neutral): _____

Other Non-Party Participant (Describe Role): _____

Other Non-Party Participant (Describe Role): _____

Other Non-Party Participant (Describe Role): _____

Signature of Husband

Date

Signature of Wife

Date

INTERIM AGREEMENT TO BE RELIED UPON
BETWEEN (FULL NAME OF HUSBAND) AND (FULL NAME OF WIFE)

This is an “Agreement To Be Relied Upon,” made by and between _____
(hereinafter referred to as “Husband”) and _____ (hereinafter referred to as “Wife”).
Husband and Wife shall hereinafter be referred to collectively as “the parties.”

The parties were married on _____, in _____. After having
signed the Collaborative Family Law Participation Agreement and Addenda (collectively referred to
hereinafter as “CFLPA”) on _____, the parties are now commencing and engaged in
the Collaborative Family Law Process for the purpose of negotiating and resolving the issues
involved in the termination of their marriage in a non-adversarial manner.

The CFLPA provides that during the Collaborative Family Law Process, the parties may enter
into a written agreement captioned “Agreement To Be Relied Upon” that the parties intend to
survive and be binding even if the Collaborative Family Law Process is terminated before a final
agreement is reached. The parties intend this agreement, as set forth herein, to be “An Agreement To
Be Relied Upon” as provided in the CFLPA, with their agreement on the terms as stated herein as
follows:

1.

2.

3.

4.

5. All other present written agreements between the parties within the Collaborative Family Law Participation Agreement and Addenda shall remain in full force and effect and shall be incorporated by reference herein.

Signature of Husband

Signature of Wife

Dated: _____

Dated: _____

AGENDA – FIRST JOINT COLLABORATIVE FAMILY LAW MEETING

Parties:

Attorneys:

Neutrals:

Communications:

Financial:

Date:

Place:

Note Taker for First Meeting: _____. Notes to be approved and signed by Parties at end of this meeting or shortly after meeting (but always prior to next meeting), and these notes will serve as Minutes of this meeting, with Notes to also include any photos taken (by cell phone) of any “white sheets” prepared during the meeting, as well as any papers prepared for and reviewed and discussed during this meeting.

1. **Confirm (for purposes of the Minutes)** that the Collaborative Process Participation Agreement and Addenda have been signed by the Parties and all professionals in this case. Confirm that all have a copy (either photo copy or electronic copy). (NOTE: Prior to this meeting, the Parties have reviewed Agreement and all Addenda and discussed any questions or concerns with his/her attorney; this was done in order to minimize or eliminate this time in the joint meeting.)

NOTES:

2. **Brief overview** of joint meetings: structure and communication requirements of the Collaborative Process for our joint meetings:
 - Agenda for every meeting, in advance of the meeting. (See statement at end of the Agenda for this meeting, which will be on every meeting Agenda.)
 - Adding issues to Agenda prior to meeting
 - Minutes of the meetings, to be signed by the Parties
 - Communications between/among the professionals outside of the meetings
 - Need for positive framework for communications between the Parties, both within the meetings and outside of the meetings. (Communications outside of the Collaborative Process will be discussed more specifically later in this meeting.)
 - Housekeeping: To make process more efficient, each party, attorney, and neutrals should print out and bring a copy of the agenda to each meeting.

NOTES:

3. **Brief overview** of the overall Collaborative Process from the beginning to reaching final agreement. (This is intended to be a brief overview of the components of the Process, with substantive discussion on each component to follow later per this Agenda.)
- Identification and Discussion of Each Party's Interests and Goals (This may be revisited and revised over the course of the process, as needed or desired by either party.)
 - Financial Disclosure
 - Identification, Valuation of Assets (including appraisals of assets) and Debts
 - Income From All Sources and Cash Flow Analysis
 - Obtain any other financial or non-financial information which is needed or may be beneficial
 - Discuss Options and Alternatives (Brainstorming) related to the following:
 - Create Plan/Reach Agreement on Terms Re Allocation/Distribution of Marital Assets and Debts.
 - Create Plan/Reach Agreement on Terms Re Support (spousal and/or child support, including children's expenses).
 - Create Plan/reach Agreement on Terms Re Parties' time allocation with Minor Children and all other child-related issues.
 - In Brainstorming, all ideas are listed and none should be immediately rejected.

NOTES:

4. **Brief Overview** of the dissolution or uncontested divorce court procedures.

- County of filing (brief discussion of county of filing options)
- Court documents required
 - Separation Agreement
 - Financial Affidavits
 - Dissolution Petition, etc.
- Filing/E-filing with court
- Private hearing with private judge—which is when marriage would be terminated

NOTES:

5. **Review Checklist for the Process**

NOTES:

6. **Managing the Costs of the Dissolution Process**

(This will include a discussion of how costs of the process will be shared. It is important that the parties have a clear and mutual understanding of how the costs of the process will be shared.)

NOTES:

7. **Are there any immediate issues** that either Party believes needs to be resolved today in this meeting? If there are, this should be noted to the Professional Team (attorneys and neutrals before the meeting). If there are none, we move to the next agenda item.

- a. Are there any immediate financial issues?

NOTES:

- b. Is there any communication/boundary issue outside of these meeting?

NOTES:

- c. Other issues?

NOTES:

8. **What are the Parties' interests and goals, including e.g., timing objectives for completing this process?** (We will attach "white sheet(s)" on this topic that are prepared during this discussion.)

Interests and Goals will include the parties' timing objectives for completing this process.

NOTES:

9. **Review of Parties' Financial Circumstances** (We will attach whatever work papers (Name of Financial Neutral) may have prepared for and which are reviewed and discussed during this meeting.)

- Identification, Valuation, and Allocation of Assets and Debts

NOTES:

- Income From All Sources and Cash Flow Analysis

NOTES:

- Is further information, financial or otherwise related needed at this time? And, if so what?

E.g., Appraisals? What and by whom?

E.g., Valuations of pension/accounts?

Other?

NOTES:

- How are the parties currently paying bills and expenses? Is there an interest in making immediate changes to how bills are paid?

NOTES:

10. **Next Step(s) in this Process.**

NOTES:

11. **Identify/Summarize “TO DO” items** assigned to each Party and Professional Team Member before next joint meeting.

a.

b.

c.

d.

e.

f.

NOTES:

12. **Schedule future meetings.** Please bring calendars.
(It is recommended that 3 meetings be scheduled at this time, approximately 2-3 weeks apart.)

NOTES/DATES:

Please note:

An Agenda for each meeting is prepared and circulated prior to each meeting, as this is important to the collaborative law process, so that we avoid using the joint meetings to address unidentified "surprise" issues. An Agenda circulated prior to each meeting enables both Parties to come to the meetings knowing what to expect to be discussed and to be prepared for the meeting. If either Party wants to discuss something other than or in addition to the items specifically identified on the Agenda, please bring it to the attention of your attorney before the meeting.

Also, whatever we do not finish in this first meeting, we will include on the agenda for next meeting.

Notes approved as Minutes of this meeting:

Husband

Date

Wife

Date