

**PROTOCOLS OF PRACTICE
FOR
COLLABORATIVE FINANCIAL NEUTRALS**

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CENTRAL OHIO ACADEMY OF
COLLABORATIVE DIVORCE PROFESSIONALS**

**PROTOCOLS OF PRACTICE FOR COLLABORATIVE FINANCIAL NEUTRAL
DRAFTING SUBCOMMITTEE MEMBERS**

Susan A. Moussi, CPA, CFP, CDFIA
2 Miranova Place, Suite 600
Columbus, OH 43215
smoussi@armcpa.com

Heather Deskins, CPA, CVA, BVA, CFE
309 S. Fourth St, Suite 319
Columbus, OH 43215
Heather.deskins@att.net

Chrissie Powers, CPA/CFF, CVA, CFE
309 S. Fourth St, Suite 319
Columbus, OH 43215
chrissie.powers@att.net

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PROTOCOLS OF PRACTICE FOR COLLABORATIVE FAMILY FINANCIAL NEUTRALS

TABLE OF CONTENTS

Introduction

Chapter 1 General Provisions

- Section 1.01. Short Title
- Section 1.02. Definitions
- Section 1.03. Ethical Considerations
- Section 1.04. Observance of Protocols
- Section 1.05. Forms

Chapter 2 Engagement Considerations

- Section 2.01. Suitability for Collaborative Engagement
- Section 2.02. Role of the Financial Professional
- Section 2.03. Terms of Engagement

Chapter 3 Relationship of Financial Professional to Clients and Lawyers

- Section 3.01. Communications
- Section 3.02. Disclosure
- Section 3.03. Working Within the Scope of the Engagement
- Section 3.04. Payment of Fees
- Section 3.05. Documentation

Chapter 4 Relationship of Financial Professional to Other Allied Professionals

- Section 4.01. Team Concept
- Section 4.02. Communications

Chapter 5 Protecting the Collaborative Process

- Section 5.01. Integrity of the Process
- Section 5.02. Honesty and Full Disclosure by the Clients
- Section 5.03. Marital Balance Sheet and Valuations
- Section 5.04. Correction of Mistakes
- Section 5.05. Safe Environment
- Section 5.06. Services Outside Of the Collaborative Engagement

Chapter 6 Withdrawal

INTRODUCTION

Since Central Ohio lawyers began utilizing collaborative law to resolve family law disputes, and following the statutory recognition of collaborative law in ORC Section 3105.41, there has been an effort to promote the use of neutral financial professionals as a formal part of the collaborative team.

The Central Ohio Academy of Collaborative Divorce Professionals ("COACDP"), a Central Ohio nonprofit organization, is committed to the appropriate use of financial professionals as neutral advisors in collaborative law matters.

We, COACDP, consider it advisable to have protocols of practice to assist financial professionals in collaborative law engagements. The drafting committee relied upon many resources, particularly the Protocols of Practice of the Collaborative Law Institute of Texas and the collective experience of financial professionals and lawyers engaged in collaborative law in Central Ohio. 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 relationship between the collaborative lawyers and the financial professional
- The relationship between financial professionals and other professionals
- Protection of the collaborative process
- The role of the neutral financial professional
- Communication with clients, lawyers and other allied professionals
- Withdrawal from the process

These protocols are designed to address issues commonly encountered by the financial professional in collaborative law and describe what COACDP considers to be best practices. We hope the collaborative financial professional finds 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 "Protocols of Practice for COACDP Financial Neutrals."

SECTION 1.02. DEFINITIONS. All of the definitions set forth in ORC Section 3105.41 are applicable and are as defined therein.

In these protocols the following additional terms are defined as follows but may not be in conflict with any definitions as set forth in the ORC:

(a) "Allied Team Professionals" are "regular members of the team" which means an individual engaged by the parties as a neutral to participate in and assist in the collaborative law process. The term includes a financial professional, coach, child specialist, or any other individual engaged by the parties.

(b) "Client(s)" means each party to the legal dispute or transaction who signs a collaborative law participation agreement and jointly engages the financial professional.

(c) "Collaborative family lawyer" means a lawyer who represents a client in a collaborative matter.

(d) "Collaborative family law" means a process wherein the parties sign an agreement to negotiate in good faith to settle a legal matter without resort to a court's imposing the resolution, to provide all relevant information and to engage only neutral experts and allied professionals to assist in resolving issues. The written agreement must provide that the lawyers and the allied professionals shall withdraw if the matter requires litigation. The agreement may contain other provisions not inconsistent with the foregoing requirements.

(e) "Collaborative team" (the team) means the clients, their collaborative lawyers, financial professionals and other allied professionals engaged in the collaborative law matter.

(f) "Financial professional" is a neutral advisor, qualified by knowledge, skill, experience, training, and education, jointly engaged by the clients to provide objective and unbiased financial advice.

(g) "Neutral" in the collaborative process means the ability and requirement for the financial professional (and other allied professionals) to work in an impartial, even-handed manner to provide information used in the collaborative law process to reach a client-driven, out-of-court settlement while avoiding alignment with any party or position.

(h) "Consulting Expert Participation Agreement" is a contract between the clients and the allied professional (which may also include the clients' lawyers) that defines the involvement of the financial professional in the collaborative law case. This agreement is in addition to the financial professional's engagement letter which shall clearly state the hourly rate of the services to be provided.

(i) "Protocols" means the proper conduct to be followed during the performance of services by a financial professional in a collaborative law engagement.

(j) **SECTION 1.03. ETHICAL CONSIDERATIONS.** These protocols are subordinate to any US and/or State administrative or licensing rules which 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.

Comment

For example, Certified Public Accountants are subject to the licensing Rules of Professional Conduct and other rules promulgated by the Ohio Accountancy Board. 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. COMPLIANCE OF PROTOCOLS. These protocols are voluntary. However, the COACDP strongly recommends that all individual financial professionals and their firms adopt these protocols as expected behavior and fundamental for all financial professionals engaged in the collaborative law process.

SECTION 1.05. STANDARDIZED FORMS. We urge the use of the forms promulgated by COACDP.

Comment

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 is expected to 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 decline to be involved in a collaborative engagement when the financial professional becomes 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.

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.

Comment

Collaborative law is not to be used as a subterfuge by clients with ulterior motives. A financial professional acknowledges that choosing collaborative law as a dispute resolution process is the clients' prerogative. When a financial professional is confronted with a party who wishes to circumvent or preclude the use of the collaborative law process, the financial professional should assess:

- 1) 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;*
- 2) Whether the financial professional possesses the requisite skills to overcome the barriers in a reasonable timeframe and within the collaborative spirit; and*
- 3) Whether there are adequate resources (such as other allied professionals) available to supplement the financial professional's expertise.*

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 under Section 6 "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.

(a) The financial professional should verify the clients' interests, goals, and expectations that influence the financial analyses.

(b) The financial professional may undertake various services which may include gathering financial details; developing budgets; presenting possible financial options of settlement; valuing property; evaluating tax and economic issues; forecasting cash flows, examining retirement and insurance issues; preparing marital balance sheets and financial settlement scenarios; and tracing and characterizing property.

(c) The scope of the financial professional's engagement is defined by the clients, 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.

(d) The financial professional shall not provide legal advice.

Comment

It is essential that the financial professional remain neutral, maintain confidentiality (as described in these protocols), and work 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.

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 an agreement (preferably in writing) reflecting 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, and address such matters as agreements regarding communications, retainers, fees and sources of funds from which the financial professional is paid. The engagement letter should clearly state that the financial professional's services will terminate upon the termination of the Collaborative Process. This means that neither party can engage the financial professional in divorce consulting services after the engagement has terminated.

CHAPTER 3

RELATIONSHIP OF FINANCIAL PROFESSIONAL TO CLIENTS AND LAWYERS

A neutral financial professional 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.

SECTION 3.01. COMMUNICATIONS. 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.

Specific facts and circumstances of a case may require more interaction with one client or lawyer than the other. 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. For example, the parties may agree that one party possesses less skill than the other in personal money management and requires additional time with the financial professional.

Clients and lawyers should receive copies of all written communications between the clients and 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

(including electronic communications) should only be shared with both lawyers and other appropriate team members and be marked as "For Professionals Only".

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 3.02. DISCLOSURE. 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 parties and lawyers as soon as it becomes apparent.

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.

Comment

The use of a financial expert not collaboratively trained but particularly 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.

SECTION 3.03. 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 parties 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 3.04. PAYMENT OF FEES. The clients and financial professional, prior to the commencement of work by the financial professional, should designate in writing the person responsible for the payment of the financial professional's fees. If one client is paying all or substantially all of the fees, the other client should be informed that this fact will 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.

Timely and adequate fee status updates should be made to lawyers and clients. Fees are a valid subject for any meeting agenda.

SECTION 3.05. DOCUMENTATION. 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.

The financial professional shall perform adequate inquiries to 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 FINANCIAL PROFESSIONAL TO OTHER ALLIED PROFESSIONALS

SECTION 4.01. TEAM CONCEPT. Allied professionals are hired by the clients with the advice and input from their respective lawyers. All the allied professionals should consider themselves part of the collaborative law 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, if any, (including mental health issues) which might complicate settlement of the case.

Comment

Often it is advisable for the lawyers 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. If the clients approve, the financial professional may communicate directly with other allied professionals (for example, a mental health professional 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 of the lawyers when facts or issues are discovered during the scope of the financial professional's engagement which are relevant to the case. It is appropriate for the financial professional to ask for the involvement of a 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.

Comment

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.

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. 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 may be made available to all members of the collaborative team.

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.

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.

If full disclosure is not readily embraced by the offending party, the financial professional shall seek the assistance of one or both lawyers and 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 in perception.

SECTION 5.03. MARITAL BALANCE SHEET AND VALUATIONS. Financial professionals may be hired to assist in the marital balance sheet preparation. 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 time and expense later. Clients should be encouraged to work together with or without the financial professional to jointly prepare the listing of assets and liabilities. 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 to the clients and the attorneys.

SECTION 5.05. SAFE ENVIRONMENT. The financial professional should strive to provide a safe environment for goal setting, financial data gathering and the settlement process.

The financial professional acknowledges that a safe environment necessarily involves the following principles:

- (a) Encouraging creative problem-solving and discouraging positional bargaining
- (b) Speaking directly with participants and other collaborative professionals about any perceived non-collaborative behavior and attempting to remedy same in a constructive manner
- (c) Using non-defensive methods of hearing criticism
- (d) Exercising patience at all times
- (e) Avoiding the use of pressure, threats or deadlines
- (f) Acknowledging the process can only progress at the pace of the slowest participant
- (g) Avoiding assessment of blame and use of judgmental language
- (h) Avoiding surprises
- (i) Adhering to realistic time schedules
- (j) Encouraging the full utilization of allied professionals, both between clients and the allied professionals and between the professionals themselves
- (k) Urging use of language that encourages the speaker to speak in the first person ("I feel," "I believe," etc.) and avoiding speech in the second person ("you know," "you failed," "you always," "you never," etc.)
- (l) Allowing clients to set and agree on timing of issue or deadlines.
- (m) Be family-centered by providing objective and unbiased analysis, advice, and professional opinion. Consider each client's individual goals and objectives as well as the family as a whole. Use of the phrase "in the best interest of the family" is very useful in reinforcing the principal.

SECTION 5.06. SERVICES OUTSIDE OF THE COLLABORATIVE ENGAGEMENT. A financial professional's solicitation of services outside of the collaborative law engagement is strictly prohibited, in any manner at any time.

During the collaborative process, the financial professional may not provide to either client financial services that are outside the scope of the engagement.

CHAPTER 6

WITHDRAWAL

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

- (a) An attempt by either party to limit the scope of the engagement.
- (b) The withholding of information required for the performance of the engagement.
- (c) 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.
- (d) Any threats of litigation, coercion, intimidation etc. from either client or lawyer.
- (e) The continued uncorrected problematic communications with either client or lawyer.
- (f) 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.