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**PROTOCOLS OF PRACTICE FOR
COLLABORATIVE FINANCIAL PROFESSIONALS**

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PROTOCOLS OF PRACTICES FOR COLLABORATIVE FINANCIAL
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TABLE OF CONTENTS

CHAPTER 1	5
GENERAL PROVISIONS	5
SECTION 1.01. SHORT TITLE.	5
SECTION 1.02. DEFINITIONS	5
SECTION 1.03. ETHICAL CONSIDERATIONS	6
SECTION 1.04. OBSERVANCE OF PROTOCOLS	7
SECTION 1.05. FORMS	7
CHAPTER 2	7
ENGAGEMENT CONSIDERATIONS	7
SECTION 2.01. SUITABILITY FOR COLLABORATIVE ENGAGEMENT	8
SECTION 2.02. ROLE OF THE FINANCIAL PROFESSIONAL	9
SECTION 2.03. TERMS OF ENGAGEMENT	9
CHAPTER 3	10
RELATIONSHIP OF FINANCIAL PROFESSIONAL TO CLIENTS AND LAWYERS	10
SECTION 3.01. COMMUNICATIONS	10
SECTION 3.02. DISCLOSURE	11
SECTION 3.03. WORKING WITHIN THE SCOPE OF THE ENGAGEMENT	12
SECTION 3.04. PAYMENT OF FEES	12
SECTION 3.05. DOCUMENTATION	13
CHAPTER 4	13
RELATIONSHIP OF FINANCIAL PROFESSIONAL TO OTHER ALLIED PROFESSIONALS	13
SECTION 4.01. TEAM CONCEPT	13
SECTION 4.02. COMMUNICATIONS	14
CHAPTER 5	14
PROTECTING THE COLLABORATIVE PROCESS	14
SECTION 5.01. INTEGRITY OF THE PROCESS	14
SECTION 5.02. HONESTY AND FULL DISCLOSURE BY THE CLIENTS	15
SECTION 5.03. INVENTORY AND APPRAISEMENT	16
SECTION 5.04. CORRECTION OF MISTAKES	16
SECTION 5.05. SAFE ENVIRONMENT	16
SECTION 5.06. SERVICES OUTSIDE OF THE COLLABORATIVE ENGAGEMENT	17
CHAPTER 6	18
WITHDRAWAL	18

INTRODUCTION

Since Texas lawyers began utilizing collaborative law to resolve family law disputes, and following the statutory recognition of collaborative law in Sections 6.603 and 153.0072 of the Texas Family Code in 2001, there has been an effort to promote the use of neutral financial professionals as a formal part of the collaborative team.

The Collaborative Law Institute of Texas (“CLI-TX”), a state-wide nonprofit organization, is committed to the appropriate use of financial professionals as neutral advisors in collaborative law matters.

We, CLI-TX, 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 for Collaborative Family Lawyers and the collective experience of financial professionals and lawyers engaged in collaborative law in Texas. 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 CLI-TX 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 “CLI-TX Fin. Prof. Protocols”.

SECTION 1.02. DEFINITIONS

For the purposes of these protocols, the following terms are defined as follows:

- 1) “Allied professional” means a neutral advisor trained in the collaborative process, jointly engaged by the clients to participate and assist in the collaborative process, working as a team member with the clients, lawyers, and other allied professionals to achieve an out-of-court settlement. A financial professional and a mental health professional are examples of allied professionals.
- 2) “Client(s)” means each party to the legal dispute or transaction who signs a collaborative law participation agreement and jointly engages the financial professional.
- 3) “Collaborative lawyer” means a lawyer trained in the collaborative process who represents a client in a collaborative law matter.
- 4) “Collaborative law” means a process wherein the parties and their lawyers 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 shall withdraw if the matter requires litigation. The agreement may contain other provisions not inconsistent with the foregoing requirements.
- 5) “Collaborative engagement” means an agreement to provide financial services in a collaborative law matter in which a collaborative law participation agreement has been signed by the clients and their lawyers.

6) “Collaborative law participation agreement” is a written contract between the clients and their lawyers to use the collaborative law process to resolve their dispute and includes mandatory withdrawal of the lawyers if the matter is not resolved without court intervention. An example is available for download at www.collablawtexas.com.

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

8) “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.

9) “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 facilitate the collaborative law process to reach a client-driven, out-of-court settlement while avoiding alignment with any party or position.

10) “Neutral 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. An example is available for download at www.collablawtexas.com.

11) “Protocols” means the proper conduct to be followed during the performance of services by a financial professional in a collaborative law engagement.

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 Texas State Board of Public Accountancy. These protocols should be interpreted in a manner consistent with those rules or rules similarly promulgated by the licensing or governmental administrative organization having authority over a financial professional's conduct in engagements other than collaborative law matters.

SECTION 1.04. OBSERVANCE OF PROTOCOLS

These protocols are voluntary: However, the CLI-TX strongly recommends that all individual financial professionals, their firms and local practice groups adopt these protocols as expected behavior and fundamental for all financial professionals engaged in the collaborative law process.

SECTION 1.05. FORMS

We urge the use of the forms promulgated by the Collaborative Law Institute of Texas available through electronic download on the CLI-TX website at www.collablawtexas.com.

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 time frame 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; financial modeling; presenting possible financial options of settlement; valuing property; evaluating tax and economic issues; forecasting cash flows, examining retirement and insurance issues; preparing inventories and financial settlement scenarios; and tracing and characterizing property.
- (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, address such matters as agreements regarding communications, retainers, fees and sources of funds from which the financial professional is paid, and whether or not the financial professional may be called upon to provide future testimony.

CHAPTER 3

RELATIONSHIP OF FINANCIAL PROFESSIONAL TO CLIENTS AND LAWYERS

A neutral financial professional (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 of 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 should only be shared with both lawyers.

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.

The financial professional shall also disclose any business relationship the financial professional and either client or either lawyer has discussed prior to the engagement. The purpose of such disclosure is to provide an opportunity for any party to evaluate the impact of these relationships on how the parties will perceive the financial professional's neutrality and if the financial professional will be engaged. The potential

conflict may not prevent the financial professional from being employed, or continuing employment, if both parties concur.

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

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 and source of 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. INVENTORY AND APPRAISEMENT

Financial professionals may be hired to assist in the inventory and appraisal 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 inventory. The financial professional should be fully available to answer questions from the clients, encouraging open communication, and thereby conserving funds.

SECTION 5.04. CORRECTION OF MISTAKES

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

SECTION 5.05. SAFE ENVIRONMENT

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

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

1. Encouraging creative problem-solving and discouraging positional bargaining
2. Speaking directly with participants and other collaborative professionals about any perceived non-collaborative behavior and attempting to remedy same in a constructive manner
3. Using non-defensive methods of hearing criticism
4. Exercising patience at all times
5. Avoiding the use of pressure, threats or deadlines
6. Acknowledging the process can only progress at the pace of the slowest participant

7. Avoiding assessment of blame and use of judgmental language
8. Avoiding surprises
9. Adhering to realistic time schedules
10. Encouraging the full utilization of allied professionals, both between clients and the allied professionals and between the professionals themselves
11. 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.)
12. Allowing clients to set and agree on timing of issue or deadlines.

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.

A financial professional may, during the collaborative process, agree to provide one or both clients with financial services after the end of the collaborative process only if: (a) the financial professional reasonably believes the financial professional’s representation of both clients during the collaborative process will remain impartial and will not be materially affected; and (b) each client consents to such agreement after full disclosure of the existence, nature, implications, and possible adverse consequences of the agreement, and the advantages involved, if any.

In the event either client approaches a financial professional during the collaborative process about working with such client in any capacity following the divorce, the financial professional must inform such client that he or she may not, during the collaborative process, agree to such an arrangement without the other client’s advance informed consent, and notification of all team members.

Nothing in this section prohibits the financial professional from providing unsolicited services to a client after the end of the collaborative process, provided the requirements of this section are satisfied during the collaborative process.

Comment:

(1) If during the collaborative process one client employs the financial professional for work after the collaborative case has concluded, the perception of neutrality may be compromised. However, if the other client is fully informed of the risks, including the potential loss of the financial professional's neutrality during the collaborative process, and nevertheless agrees to permit the financial professional to agree during the collaborative process to provide financial services to the other party, then the financial professional may, during the collaborative process, agree with the other client to provide such financial services after the end of the collaborative case. However, when a disinterested financial professional would conclude that the client should not – because of a lack of sophistication or for any other reason – consent to the future relationship, the financial professional should not ask for or accept such consent or provide representation in the collaborative process on the basis of the client's consent.

(2) If a client approaches in financial professional about a future working relationship during the collaborative process, an appropriate response would be, "I cannot, during the collaborative process, discuss any subsequent business relationship with you unless the other client provides his/her fully informed consent and all team members are notified.. The reality and perception of neutrality is too crucial to the collaborative process."

(2) Disclosure and consent are not mere formalities. Disclosure sufficient for sophisticated clients may not be sufficient to permit less sophisticated clients to be fully informed.

CHAPTER 6.

WITHDRAWAL

The financial professional has an obligation to communicate to the clients and the lawyers, any circumstances 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:

- An attempt by either party to limit the scope of the engagement.
- The withholding of information required for the performance of the engagement.
- The attempt by either client or lawyer to work outside the protocols of collaborative law with respect to the financial professional's engagement, including excessive lobbying or attempts to influence the judgments or conclusions of the financial professional.
- Any threats of litigation, coercion, intimidation etc. from either client or lawyer.
- The continued uncorrected problematic communications with either client or lawyer.
- 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.