

# 2015 Nuts & Bolts Seminar Coralville (Eastern Iowa)



## LITIGATION TRACK ADR

**3:00 p.m.- 4:00 p.m.**

**Presented by**

Jacob Koller

Simmons Perrine Moyer Bergman PLC

115 3rd St SE Ste. 1200

Cedar Rapids, IA 52401

Phone: 319-366-7641



**FRIDAY, OCTOBER 2, 2015**

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ATTORNEYS

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David A. Hacker  
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*Reply to Cedar Rapids Office*  
Author's Extension: 222  
E-Mail Address: jkoller@simmonsperine.com

September 25, 2015

*Attorney for Petitioner*

*Attorney for Respondent*

RE: Mediation Session

Dear Counsel:

This correspondence is in follow-up to the Jane and John Doe mediation of October 2, 2015. Jane and John had a very productive session. We spent 1.8 hours in a joint session and the parties were able to reach tentative agreements resolving all issues. I am attaching for your records a copy of the signed Contract to Mediate and Mediation Certificate of Attendance. The Mediation Certificate of Attendance has been filed with the Clerk of the District Court for Linn County via the electronic document management system.

I advised both parties that mediation agreements are nonbinding and confidential until they are placed in the terms of a written agreement that has been reviewed by counsel and approved by the court. In particular, the parties specifically desired the opportunity to further discuss the physical care provisions with counsel. Subject to this understanding, they agreed as follows:

1. LEGAL CUSTODY AND PHYSICAL CARE. Jane and John agreed to joint legal custody and joint physical care of Baby Doe. As a default regular care schedule, the parties agreed that John would have Baby Doe in his care as follows:

a. Week 1. From Wednesday at 5:00 p.m. until Thursday at 8:00 a.m.; and from Friday after daycare or school (or 5:00 p.m. if daycare or school is not in session) until Monday at 8:00 a.m.

b. Week 2. From Wednesday at 5:00 p.m. until Friday at 5:00 p.m.

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*Also licensed to practice in: 1 Illinois 2 Wisconsin 3 New York 4 Minnesota 5 Michigan 6 Nebraska 7 Texas 8 California*

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# Simmons Perrine Moyer Bergman PLC

September 25, 2015

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- c. The above schedule would then repeat thereafter.

Jane would have Baby Doe in her care for the remaining periods of time. The parties understand that this is not an equal division of Baby Doe's time (i.e., it is approximately 57% (Jane)/43% (John)). In addition, the parties agreed to alternate holidays, with details to be worked out in the final settlement document; to each party being awarded one week of extended/exclusive care with Baby Doe each year; and for the care exchange transportation default to be the party receiving care of Baby Doe to be responsible for transporting her.

2. CHILD SUPPORT. The parties agreed that John will pay Jane \$223 per month as child support, which they understood to be in substantial compliance with the Iowa Child Support Guidelines. I am attaching a child support guidelines worksheet for your review. The parties also agreed to share Baby Doe's expenses as set forth in the enclosed worksheet.

3. COLLEGE EXPENSES. The parties agreed to reserve jurisdiction concerning Baby Doe's college expenses.

4. CHILD MEDICAL SUPPORT. The parties agreed that Jane will maintain medical, dental, and vision insurance coverage for Baby Doe, with each party responsible for 50% of her uncovered medical expenses.

5. LIFE INSURANCE. The parties agreed to maintain life insurance for the benefit of Baby Doe with a minimum death benefit of \$100,000, and to have the insurance policies in effect within 90 days of the decree of dissolution of marriage.

6. CHILD TAX DEPENDENCY EXEMPTION. The parties agreed that John will be entitled to claim Baby Doe as a dependent in odd-numbered tax years and Jane will be entitled to claim Baby Doe in even-numbered tax years.

7. HEAD OF HOUSEHOLD. The parties agreed that Jane will be entitled to elect head of household filing status. [Note: based on the care schedule, I do not believe John would qualify as head of household.]

8. SPOUSAL SUPPORT. The parties agreed that neither party will pay spousal support.

9. PROPERTY DIVISION.

a. The parties agreed that John will be awarded the marital residence, subject to the requirement to remove Jane from any liability on the mortgages/notes secured by the property, and to pay Jane her one-half share of the net equity (calculated as follows: appraisal – debt x 50% = equals Jane's share), which is roughly \$8,000.

b. The parties have divided household contents by agreement.

# Simmons Perrine Moyer Bergman PLC

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c. Otherwise, each party will receive the assets and debts in his or her name.

10. ATTORNEY FEES AND COURT COSTS. The parties agreed that each party will be responsible for his or her own attorney fees and John will pay the remaining court costs.

This is a complete statement of the parties' mediation agreements. At the end of the session, I reviewed the above terms with both parties. I appreciate the efforts of both parties to engage in mediation in good faith. The cost of this mediation, including this summary, was \$630, of which each party has been allocated \$315. An invoice reflecting the fees and payments is attached for your records.

Thank you for the opportunity to mediate in this case. If you have any questions about these agreements, or if I can be of additional assistance, please let me know.

Sincerely,



Jacob R. Koller

Enclosures

cc: John Doe (w/encl.)  
Jane Doe (w/encl.)

**ISSUES TO BE DISCUSSED IN MEDIATION:**

1. \_\_\_\_\_ Custody / Physical Care
  2. \_\_\_\_\_ Visitation / Alternate Care
  3. \_\_\_\_\_ Child Support
  4. \_\_\_\_\_ Post High School Educational Support
  5. \_\_\_\_\_ Health Insurance / Uninsured Health Related Expenses
  6. \_\_\_\_\_ Life Insurance
  7. \_\_\_\_\_ Tax Dependency Exemptions
  8. \_\_\_\_\_ Alimony / Spousal Support
  9. \_\_\_\_\_ Valuation and/or Distribution of Real Estate
  10. \_\_\_\_\_ Valuation and/or Distribution of Pension
  11. \_\_\_\_\_ Valuation and/or Distribution of Other Property
  12. \_\_\_\_\_ Indebtedness
  13. \_\_\_\_\_ Attorney Fees / Costs
  14. \_\_\_\_\_ Other:
-

## CONTRACT TO MEDIATE

This Contract to Mediate is signed by the parties and Jacob R. Koller of Simmons Perrine Moyer Bergman PLC on October 2, 2015, to create and clarify the mediation relationship.

1. Jacob R. Koller will conduct the mediation and will be compensated at the rate of \$225.00 per hour. The parties agree to pay the hourly fee at the conclusion of each mediation session. Reasonable costs may include, but are not limited to, long distance telephone calls, copies, extraordinary postage and/or delivery expenses. The parties agree that nonpayment of fees or reasonable costs when due shall permit mediator to stop all action or involvement.
2. The parties agree that they will pay \$50 if an appointment is canceled or rescheduled without 24-hour advance notice.

All parties to this agreement acknowledge that information received during the mediation process is confidential. All statements made during mediation are statements made in compromise negotiation and are not admissible in court. Neither party nor mediator may reveal to a third party, other than the parties' attorneys, any statement made within mediation, except by prior consent of the parties or as required by Iowa Code Chapter 679C (The Uniform Mediation Act).

If subpoenaed or otherwise notified to testify, the mediator shall inform the participants immediately so as to afford them an opportunity to undertake action to quash the process. If, at a later time, either party decides to subpoena the mediator, that party agrees to pay the mediator \$225.00 per hour, including time spent in hearings and waiting for hearings, plus whatever expenses he incurs in connection with the action. If both parties subpoena the mediator, each shall be jointly and severally liable for all such fees and expenses.

All parties agree that legal advice and legal representation are not part of mediation and will not be provided by Jacob R. Koller.

By signing below each party acknowledges the following program disclaimer:

I understand that Jacob R. Koller, the mediator, operates as an independent contractor. I have contracted with him directly as an independent contractor for mediation services. Jacob R. Koller is not an employee of the State of Iowa or of the judicial department.

By signing this agreement, each party acknowledges receipt of a copy of Iowa Supreme Court Chapter 11 (Rules Governing Standards of Practice for Lawyer Mediators in Family Disputes and a copy of the provisions of Iowa Code Chapter 679C (The Uniform Mediation Act).

Date: \_\_\_\_\_

\_\_\_\_\_  
JACOB R. KOLLER, Mediator

Date: \_\_\_\_\_

\_\_\_\_\_  
JANE DOE, Party

Date: \_\_\_\_\_

\_\_\_\_\_  
JOHN DOE, Party

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*Reply to Cedar Rapids Office*

Author's Extension: 222

E-Mail Address: [jkoller@simmonsperine.com](mailto:jkoller@simmonsperine.com)

September 25, 2015

Jane Doe  
[address]

John Doe  
[address]

RE: Mediation Session  
October 2, 2015, at 1:30 p.m.

Dear Jane and John:

Thank you for your interest in mediation. I look forward to meeting together with you and assisting you in learning more about this process. Ultimately, I hope the process will be of assistance to you in reaching agreements on matters of importance in your dissolution action.

Mediation sessions are normally scheduled to be two hours in length. The number of sessions required will vary according to the state of your communications and the nature and number of issues you would like to resolve. Multiple sessions may sometimes be necessary. We can discuss this further at our first mediation session.

**Prior to your scheduled mediation session, each party is required to advance \$225 toward the cost of mediation.** Please coordinate this advance payment with my assistant at (319) 366-7641 or [xxxxxx@simmonsperine.com](mailto:xxxxxx@simmonsperine.com). This advance payment will cover the first two hours of the mediation session. If the total cost of your mediation is less than \$450, the overpayment will be returned to you. **There are two components that will determine the cost of your mediation: (1) the amount of time we actually spend mediating, which begins at the time of initial introductions; and (2) at the end of your session, if agreements are reached, I will estimate the amount of time it will take to draft a mediation summary, which is usually between 30 minutes and one hour.** All of the remaining costs for mediation time and the cost of drafting the mediation summary must be paid in full at the conclusion of our session.

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# Simmons Perrine Moyer Bergman PLC

September 25, 2015

Page 2

Please note that we no longer accept personal checks. We accept MasterCard, Visa, and Discover, both in the form of debit and credit transactions, as well as cash or other guaranteed funds.

We have scheduled your mediation session at my office located in Cedar Rapids, Iowa, on Wednesday, October 2, 2015, at 1:30 p.m.

Two forms are enclosed which you will need to complete before the initial mediation conference so we can expedite matters at our session. The first is a case information sheet and the second is an initial pre-mediation form. Please take the time to review, complete and return these forms to me prior to the mediation. These materials will be kept confidential.

Also enclosed is a copy of my contract to mediate. Please review it carefully along with the accompanying mediation rules and standards which it incorporates. We will be completing this contract prior to the start of our initial session.

Depending on the issues you will be discussing during our mediation session, it may be helpful for each of you to bring some additional information to the session such as your Affidavit of Financial Status and Stipulation of Assets and Liabilities. The more prepared you are for the mediation, the more efficient and productive our time will be.

I look forward to meeting you on October 2<sup>nd</sup> at 1:30 p.m. and answering any further questions you may have at that time.

Sincerely,



Jacob R. Koller

JRK:klr

Enclosures:

- *case information sheet*
- *initial pre-mediation form*
- *contract to mediate*

## CASE INFORMATION SHEET

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Attorney: \_\_\_\_\_ Court Case # \_\_\_\_\_

Attorney's Address: \_\_\_\_\_

Attorney's Telephone No.: \_\_\_\_\_

Children:

Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Guardian Ad Litem or  
Attorney for Children, if any:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

## INITIAL PRE-MEDIATION FORM

*Confidential -- Not To Be Shared With Other Party*

(May be discussed with your attorney, if any.)

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Check:

Yes    No

		1. Mediation often occurs with both spouses in the same room together. Do you have any concerns about mediating in the same room with your spouse?
		2. Are you fearful of your spouse for any reason?
		3. Has your spouse ever threatened you in any way?
		4. Has your spouse ever hit you or used any other type of physical force towards you?
		5. Have you ever called the police, requested protection through an abuse order, or sought help for yourself as a result of abuse by your spouse?
		5a. Have you ever <b>thought about</b> calling the police, requesting a protective order, or <b>thought about</b> seeking protection for yourself?
		6. Mediation is a process in which divorcing spouses work together with a neutral third person to negotiate details of their divorce. Do you have any concerns that you would <u>NOT</u> be able to communicate with your spouse on an equal basis in mediation sessions?
		7. Do you have any concerns about the children's emotional or physical safety with you or the other parent?
		8. Is there a problem with alcohol or drugs in your family?
		8a. Would your spouse or others answer #8 the same as you?
		9. Has any department of children or family services (DHS) ever been involved with your family?
		10. Has there ever been medical treatment or hospitalization for psychiatric disorders in the immediate family?
		11. Are you in any way afraid to meet with the other parent and mediator?

12. Is there anything else you think I should know about you, your spouse, or your family?

Yes \_\_\_\_\_      No \_\_\_\_\_      If yes, briefly state your concerns: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

13. Do you have any fear about answering these questions?  
Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, briefly state why: \_\_\_\_\_

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14. Why do you want to mediate? \_\_\_\_\_

15. What would you like to see as one or two outcome(s) of mediation?

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16. What are the issues you feel will be the most difficult for you and your spouse to resolve: (**Circle** please)

ALIMONY - DEBT DIVISION - ASSET DIVISION - HEALTH INSURANCE AND COSTS  
CUSTODY/PHYSICAL CARE - VISITATION - CHILD SUPPORT  
EDUCATION EXPENSES - TRANSPORTATION EXPENSES

17. Do you have any concerns about how the two of you will make decisions in mediation?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, briefly state your concerns: \_\_\_\_\_

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18. If you have children, do you feel you are ready to begin working with the other parent to develop a parenting plan?

Yes \_\_\_\_\_ No \_\_\_\_\_ If no, briefly state why not: \_\_\_\_\_

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19. Briefly tell me about what you feel would be fair and equitable for your children and you (if no children, then for you):

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Sixth Judicial District Family Mediation Program  
509 Kirkwood Ave.  
Iowa City, IA 52240-4728  
319 248-1940  
FAX 319 339-6157

*Mediation Certificate of Attendance*

TO: The Clerk of Court of \_\_\_\_\_ County

RE: Case No. CDDM\_\_\_\_\_

**JOHN DOE**

**JANE DOE**

I certify that the above parties attended an initial mediation session with me.

\_\_\_\_\_  
JACOB R. KOLLER, Mediator

\_\_\_\_\_  
Date

Same day as mediation session:

- ✓ File with Clerk of Court
- ✓ Keep copy for own files
- ✓ Send copy to program director
- ✓ Send copy to parties' attorneys:

# COLLABORATIVE LAW PARTICIPATION AGREEMENT

AMONG:

John Doe, Participant — Husband/Father

- and -

\_\_\_\_\_, Attorney for Husband/Father

- and -

Jane Doe, Participant — Wife/Mother

- and-

\_\_\_\_\_, Attorney for Wife/Mother

## 1.0 GOALS

1.1 We, the Participants, believe that it is in our best interests and the best interests of our minor child(ren) to reach an agreement through the Collaborative process instead of going to Court.

1.2 We agree to use the Collaborative Law process to resolve differences. Collaborative Law is based on:

- honesty (full and complete disclosure of all assets, debts, and income);
- satisfying the interests of both parties;
- cooperation;
- integrity;
- professionalism;
- dignity;
- respect; and
- candor.

1.3 Collaborative Law focuses on our **future** well-being and the future well-being of our child(ren).

1.4 Collaborative Law does **not** rely on Court-imposed solutions.

1.5 Our goals are:

- to resolve our differences in the best interests of our child(ren);

- to eliminate the negative economic, social, and emotional consequences of litigation;
- to find solutions that are acceptable to both of us.

## **2.0 WE WILL NOT GO TO COURT**

2.1 **Out-of-Court.** We commit ourselves to settling this case without going to Court.

2.2 **Disclosure.** We agree to give full and complete disclosure of all information whether requested or not. Any request for disclosure of information will be made informally. We will provide this information promptly.

We acknowledge that by using the Collaborative process we are giving up certain investigative procedures and methods that would be available to us in the litigation process. We give up these measures with the specific understanding that we will make full and fair disclosure of all assets, income, debts, and other information necessary for a fair settlement. Participation in the Collaborative Law process, and the settlement reached, is based upon the assumption that we have acted in good faith and have provided complete and accurate information to the best of our ability. We may be required to sign a sworn statement containing a full and fair disclosure of our incomes, assets, and debts.

2.3 **Settlement conferences.** We agree to engage in informal discussions and conferences to settle all issues. All communication during settlement meetings will focus on the property, financial, and parenting issues in the dissolution and the constructive resolution of those issues. We are free to discuss issues in the dissolution with each other outside of the settlement meetings if we both agree and are comfortable doing so. We are also free to insist that these discussions be reserved for the settlement meetings where both attorneys are present.

Each of us promises not to spring discussions on the other in unannounced telephone calls or in surprise visits to the other's residence.

We understand and acknowledge 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, we agree not to engage in unnecessary discussions of past events.

2.4 **Communication.** We acknowledge that inappropriate communications regarding our dissolution can be harmful to our child(ren). Communication with our child(ren) regarding the dissolution will occur only if it is appropriate and done by mutual agreement or with the advice of a child specialist. We specifically agree that our child(ren) will not be included in any discussion regarding the dissolution except as described in this Agreement.

### 3.0 CAUTIONS

We understand and acknowledge the following:

3.1 **Commitment.** There is no guarantee we will successfully resolve our differences using the Collaborative Law process. Success is primarily dependent upon our commitment to the process. We also understand that this process cannot eliminate concerns about any disharmony, distrust, or irreconcilable differences that have led to our marriage dissolution.

3.2 **Legal issues.** The Collaborative Law process is designed to resolve the following legal issues:

- Parenting time;
- Financial support of our child(ren), including unreimbursed medical and dental expenses of our minor child(ren), and day-care costs, if any;
- Insurance (medical, dental, life);
- Spousal maintenance;
- Division of property and debts;
- Nonmarital property;
- Attorneys' fees and costs;
- and other issues we may agree to address.

This process is not designed to address therapeutic or psychological issues. When these or other nonlegal issues arise, our attorneys may refer us to appropriate experts or consultants.

3.3 **Attorney role.** Although we pledge to be respectful and to negotiate in an interest-based manner, we are each entitled to assert our respective interests, and our attorneys will help us to do this in a productive manner. We understand that our attorneys have a professional duty to represent his or her own client diligently and is not the attorney for the other, even though our attorneys share a commitment to the Collaborative Law process.

### 4.0 ATTORNEYS' FEES AND COSTS

We agree that our attorneys are entitled to be paid for their services. We also agree that each of us will pay for our own attorney unless otherwise agreed during the Collaborative Law process that one of us will contribute to the other's attorney fees.

## **5.0 PARTICIPATION WITH INTEGRITY**

- 5.1 We will respect each other.
- 5.2 We will work to protect the privacy and dignity of everyone involved in the Collaborative Law process.
- 5.3 We will maintain a high standard of integrity and specifically shall not take advantage of any miscalculations or mistakes of others, but shall immediately identify and correct them.

## **6.0 EXPERTS**

- 6.1 We agree to use neutral experts for any issue that requires expert advise and/or recommendation.
- 6.2 We will retain any expert jointly unless we agree otherwise in writing.
- 6.3 We will agree in advance as to the source of payment for the experts' retainers or other fees.
- 6.4 We agree to direct all experts to assist us in resolving our differences without litigation.
- 6.5 Unless otherwise agreed in writing, the neutral expert and any report, recommendation, or documents generated by, or any oral communication from, the neutral expert shall be shared with each of us and our respective attorneys and covered by the confidentiality clause of this Agreement.

## **7.0 CHILD(REN)'S ISSUES**

- 7.1 We agree to act quickly to resolve differences related to our child(ren).
- 7.2 We agree to promote a caring, loving, and involved relationship between our child(ren) and each parent.
- 7.3 We agree to work for the best interests of the family as a whole.
- 7.4 We agree not to involve our child(ren) in our differences.
- 7.5 We agree not to remove our minor child(ren) from the State of Iowa without the prior written consent of the other while the Collaborative Law process is pending.

## **8.0 WE WILL NEGOTIATE IN GOOD FAITH**

- 8.1 We acknowledge that each attorney represents only one client in the Collaborative Law process.
- 8.2 We understand that this process will involve good faith negotiation, with complete and honest disclosure.

8.3 We will be expected to take a balanced approach to resolving all differences. Where our interests differ, we will each use our best efforts to create proposals that are acceptable to both of us.

8.4 None of us will use threats of litigation as a way of forcing settlement, although each of us may discuss the likely outcome of going to Court.

### **9.0 RIGHTS AND OBLIGATIONS PENDING SETTLEMENT**

Although we have agreed to work outside the judicial system, we agree to be bound by the following provisions:

(1) NEITHER PARTY WILL DISPOSE OF ANY ASSETS EXCEPT (i) FOR THE NECESSITIES OF LIFE OR FOR THE NECESSARY GENERATION OF INCOME OR PRESERVATION OF ASSETS, (ii) BY AN AGREEMENT IN WRITING, OR (iii) TO RETAIN COUNSEL TO CARRY ON OR TO CONTEST THIS PROCEEDING.

(2) NEITHER PARTY MAY HARASS THE OTHER PARTY.

(3) ALL CURRENTLY AVAILABLE AND IN-FORCE INSURANCE COVERAGE SHALL BE MAINTAINED WITHOUT CHANGE IN COVERAGE OR BENEFICIARY DESIGNATION.

### **10.0 ABUSE OF THE COLLABORATIVE LAW PROCESS**

We understand that both attorneys must withdraw from this case if either attorney learns that either of us has taken unfair advantage of this process. Some examples are:

- abusing our child(ren);
- planning or threatening to flee the jurisdiction of the Court with our child(ren);
- disposing of property without the consent of the other;
- withholding or misrepresenting relevant information;
- failing to disclose the existence or true nature of assets, income, or debts;
- failing to participate collaboratively in this process; or
- any action to undermine or take unfair advantage of the Collaborative Law process.

### **11.0 ENFORCEABILITY OF AGREEMENTS**

11.1 **Temporary agreements.** In the event either of us requires a temporary agreement, the agreement will be put in writing and signed by us and our attorneys.

11.2 **Permanent agreement.** Any final, permanent agreement (sometimes called a Stipulation of Settlement) we sign shall be submitted to the Court as the basis for entry of a Decree of Dissolution of Marriage.

## 12.0 LEGAL PROCESS

12.1 **Pleadings.** Neither of us or our attorneys will file or permit the filing of any motion or document to be served or filed that would initiate court intervention during the Collaborative Law process pending final agreement.

12.2 **Stipulation.** After we reach a final agreement, one of the attorneys will prepare a Stipulation (sometimes called a Stipulation of Settlement) for review and signature by our attorneys and us.

12.3 **No court.** None of us will use the Court during the Collaborative Law process.

12.4 **Participant withdrawal from Collaborative Law process.** If one of us decides to withdraw from the process, s/he shall provide prompt written notice to his or her attorney, who in turn will promptly notify the other attorney in writing.

12.5 **Attorney withdrawal.** If one of our attorneys decides to withdraw from the process, s/he will promptly notify their client and the other attorney in writing.

12.6 **Waiting period.** Upon withdrawal from the process, there will be a thirty-day waiting period, absent an emergency, before the scheduling of any court hearing, to permit us to retain new counsel and to make an orderly transition.

12.7 **Previous agreements.** All temporary agreements will remain in full force and effect during the thirty-day period.

12.8 **No surprise.** The intent of this section is to avoid surprise and prejudice to the rights of the nonwithdrawing participant.

12.9 **Presentation to Court.** Accordingly, we agree that either of us may bring this provision to the attention of the Court in requesting the continuance of a hearing scheduled by the other or his/her attorney during the thirty-day waiting period.

## 13.0 DISQUALIFICATION

13.1 **Withdrawal of attorney.** If either Collaborative Law attorney withdraws from the case, the other attorney must also withdraw unless a withdrawing attorney is replaced by another Collaborative Law attorney who agrees in writing to comply with this Participation Agreement.

13.2 **Disqualification in subsequent matters.** After termination of the Collaborative Law process, whether by settlement or termination before settlement, neither attorney shall represent his or her client in a subsequent non-Collaborative matter against the other party.

## 14.0 CONFIDENTIALITY

14.1 **Confidentiality.** All settlement proposals exchanged within the Collaborative Law process will be confidential and without prejudice. If subsequent litigation occurs, we agree:

- a. That we will not introduce, as evidence in Court, information disclosed during the Collaborative Law process for the purpose of reaching a settlement,

except documents otherwise compellable by law, including any sworn statements as to financial status made by us;

- b. That we will not introduce, as evidence in Court, information disclosed during the Collaborative Law process with respect to the other's behavior or legal position during the process;
- c. That we will not attempt to depose either attorney or neutral expert, or ask or subpoena either attorney or any neutral expert to testify in any court proceeding with regard to matters disclosed during the Collaborative Law process; and
- d. That we will not require the production at any court proceeding of any notes, records, or documents in the attorney's possession or in the possession of any neutral expert. However, once discharged, the attorneys shall return the file to their respective clients, excluding attorney work product.

14.2 **Applicability.** We agree this Confidentiality provision applies to any subsequent litigation, arbitration, or any other method of alternative dispute resolution.

### 15.0 ACKNOWLEDGEMENT

15.1 We and our attorneys acknowledge that we have read this Agreement, understand its terms and conditions, and agree to abide by them.

15.2 We understand that by agreeing to this alternative method of resolving our dissolution issues, we are giving up certain rights, including the right to formal discovery, formal court hearings, and other procedures provided by the adversarial legal system.

15.3 We have chosen the Collaborative Law process to reduce emotional and financial costs, and to generate a final agreement that addresses our concerns. We agree to work in good faith to achieve these goals.

### 16.0 PLEDGE

**WE HEREBY PLEDGE TO COMPLY WITH AND TO PROMOTE THE SPIRIT AND WRITTEN WORD OF THIS PARTICIPATION AGREEMENT.**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Wife (Jane Doe)

\_\_\_\_\_  
Husband (John Doe)

\_\_\_\_\_  
Attorney for Wife (\_\_\_\_\_)

\_\_\_\_\_  
Attorney for Husband (\_\_\_\_\_)

# COLLABORATIVE LAW PARTICIPATION AGREEMENT

## Dissolution Without Minor Children

AMONG:

**John Doe**, Husband

- and -

\_\_\_\_\_, Attorney for Husband

- and -

**Jane Doe**, Wife

- and -

\_\_\_\_\_, Attorney for Wife

### 1.0 GOALS

1.1 We, the Participants, believe that it is in our best interests to reach an agreement through the Collaborative process instead of going to Court.

1.2 We agree to use the Collaborative Law process to resolve differences. Collaborative Law is based on:

- honesty (full and complete disclosure of all assets, debts, and income);
- satisfying the interests of both parties;
- cooperation;
- integrity;
- professionalism;
- dignity;
- respect; and
- candor.

1.3 Collaborative Law focuses on our **future** well-being.

1.4 Collaborative Law does **not** rely on Court-imposed solutions.

1.5 Our goals are:

- to eliminate the negative economic, social, and emotional consequences of litigation;

- to find solutions that are acceptable to both of us.

## **2.0 WE WILL NOT GO TO COURT**

2.1 **Out-of-Court.** We commit ourselves to settling this case without going to Court.

2.2 **Disclosure.** We agree to give full and complete disclosure of all information whether requested or not. Any request for disclosure of information will be made informally. We will provide this information promptly.

We acknowledge that by using the Collaborative process we are giving up certain investigative procedures and methods that would be available to us in the litigation process. We give up these measures with the specific understanding that we will make full and fair disclosure of all assets, income, debts, and other information necessary for a fair settlement. Participation in the Collaborative Law process, and the settlement reached, is based upon the assumption that we have acted in good faith and have provided complete and accurate information to the best of our ability. We may be required to sign a sworn statement containing a full and fair disclosure of our incomes, assets, and debts.

2.3 **Settlement conferences.** We agree to engage in informal discussions and conferences to settle all issues. All communication during settlement meetings will focus on the property and financial issues in the dissolution and the constructive resolution of those issues. We are free to discuss issues in the dissolution with each other outside of the settlement meetings if we both agree and are comfortable doing so. We are also free to insist that these discussions be reserved for the settlement meetings where both attorneys are present.

Each of us promises not to spring discussions on the other in unannounced telephone calls or in surprise visits to the other's residence.

We understand and acknowledge 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, we agree not to engage in unnecessary discussions of past events.

## **3.0 CAUTIONS**

We understand and acknowledge the following:

3.1 **Commitment.** There is no guarantee we will successfully resolve our differences using the Collaborative Law process. Success is primarily dependent upon our commitment to the process. We also understand that this process cannot eliminate concerns about any disharmony, distrust, or irreconcilable differences that have led to our marriage dissolution.

3.2 **Legal issues.** The Collaborative Law process is designed to resolve the following legal issues:

- Insurance (medical, dental, life);

- Spousal maintenance;
- Division of property and debts;
- Nonmarital property;
- Attorneys' fees and costs;
- and other issues we may agree to address.

This process is not designed to address therapeutic or psychological issues. When these or other nonlegal issues arise, our attorneys may refer us to appropriate experts or consultants.

3.3 **Attorney role.** Although we pledge to be respectful and to negotiate in an interest-based manner, we are each entitled to assert our respective interests, and our attorneys will help us to do this in a productive manner. We understand that our attorneys have a professional duty to represent his or her own client diligently and is not the attorney for the other, even though our attorneys share a commitment to the Collaborative Law process.

#### **4.0 ATTORNEYS' FEES AND COSTS**

We agree that our attorneys are entitled to be paid for their services. We also agree that each of us will pay for our own attorney unless otherwise agreed during the Collaborative Law process that one of us will contribute to the other's attorney fees or that marital assets will be used to pay both attorneys' fees.

#### **5.0 PARTICIPATION WITH INTEGRITY**

5.1 We will respect each other.

5.2 We will work to protect the privacy and dignity of everyone involved in the Collaborative Law process.

5.3 We will maintain a high standard of integrity and specifically shall not take advantage of any miscalculations or mistakes of others, but shall immediately identify and correct them.

#### **6.0 EXPERTS**

6.1 We agree to use neutral experts for any issue that requires expert advise and/or recommendation.

6.2 We will retain any expert jointly unless we agree otherwise in writing.

6.3 We will agree in advance as to the source of payment for the experts' retainers or other fees.

6.4 We agree to direct all experts to assist us in resolving our differences without litigation.

6.5 Unless otherwise agreed in writing, the neutral expert and any report, recommendation, or documents generated by, or any oral communication from, the neutral expert shall be shared with each of us and our respective attorneys and covered by the confidentiality clause of this Agreement.

## **7.0 WE WILL NEGOTIATE IN GOOD FAITH**

7.1 We acknowledge that each attorney represents only one client in the Collaborative Law process.

7.2 We understand that this process will involve good faith negotiation, with complete and honest disclosure.

7.3 We will be expected to take a balanced approach to resolving all differences. Where our interests differ, we will each use our best efforts to create proposals that are acceptable to both of us.

7.4 None of us will use threats of litigation as a way of forcing settlement, although each of us may discuss the likely outcome of going to Court.

## **8.0 RIGHTS AND OBLIGATIONS PENDING SETTLEMENT**

We acknowledge the signing of a Joint Petition for the purpose of commencing a dissolution of marriage proceeding. Although we have agreed to work outside the judicial system, we agree to be bound by the following:

(1) NEITHER PARTY WILL DISPOSE OF ANY ASSETS EXCEPT (i) FOR THE NECESSITIES OF LIFE OR FOR THE NECESSARY GENERATION OF INCOME OR PRESERVATION OF ASSETS, (ii) BY AN AGREEMENT IN WRITING, OR (iii) TO RETAIN COUNSEL TO CARRY ON OR TO CONTEST THIS PROCEEDING.

(2) NEITHER PARTY MAY HARASS THE OTHER PARTY.

(3) ALL CURRENTLY AVAILABLE INSURANCE COVERAGE MUST BE MAINTAINED WITHOUT CHANGE IN COVERAGE OR BENEFICIARY DESIGNATION.

IF YOU VIOLATE ANY OF THESE PROVISIONS, YOU WILL BE SUBJECT TO SANCTIONS BY THE COURT.

## **9.0 ABUSE OF THE COLLABORATIVE LAW PROCESS**

We understand that both attorneys must withdraw from this case if either attorney learns that either of us has taken unfair advantage of this process. Some examples are:

- disposing of property without the consent of the other;
- withholding or misrepresenting relevant information;
- failing to disclose the existence or true nature of assets, income, or debts;
- failing to participate collaboratively in this process; or

- any action to undermine or take unfair advantage of the Collaborative Law process.

## **10.0 ENFORCEABILITY OF AGREEMENTS**

10.1 **Temporary agreements.** In the event either of us requires a temporary agreement for any purpose, the agreement will be put in writing and signed by us and our attorneys. Any written temporary agreement is considered to be made pursuant to a commenced dissolution proceeding and therefore can be submitted to the Court as a basis for an Order and enforced, if necessary.

10.2 **Permanent agreement.** Any final, permanent agreement (sometimes called a Joint Petition and Stipulation or Marital Termination Agreement) we sign shall be submitted to the Court as the basis for entry of a Judgment and Decree of Dissolution.

10.3 **In case of withdrawal.** If either of us or either attorney withdraws from the Collaborative Law process, any written temporary agreement may be presented to the Court as a basis for an Order pursuant to a dissolution proceeding, which the Court may make retroactive to the date of the written agreement. Similarly, in the event of a withdrawal from the Collaborative Law process, any final agreement may be presented to the Court as a basis for entry of a Judgment and Decree of Dissolution.

## **11.0 LEGAL PROCESS**

11.1 **Pleadings.** Other than the signing of a Joint Petition to commence a dissolution of marriage proceeding, neither of us or our attorneys will file the Joint Petition with the Court, nor will we permit any motion or document to be served or filed that would initiate court intervention during the Collaborative Law process pending final agreement.

11.2 **Stipulation.** After we reach a final agreement, one of the attorneys will prepare a Stipulation (sometimes called a Marital Termination Agreement) for review and signature by our attorneys and us.

11.3 **No court.** None of us will use the Court during the Collaborative Law process.

11.4 **Participant withdrawal from Collaborative Law process.** If one of us decides to withdraw from the process, s/he shall provide prompt written notice to his or her attorney, who in turn will promptly notify the other attorney in writing.

11.5 **Attorney withdrawal.** If one of our attorneys decides to withdraw from the process, s/he will promptly notify their client and the other attorney in writing.

11.6 **Waiting period.** Upon withdrawal from the process, there will be a thirty-day waiting period, absent an emergency, before the scheduling of any court hearing, to permit us to retain new counsel and to make an orderly transition.

11.7 **Previous agreements.** All temporary agreements will remain in full force and effect during the thirty-day period.

11.8 **No surprise.** The intent of this section is to avoid surprise and avoid prejudice to the rights of the nonwithdrawing participant.

11.9 **Presentation to Court.** Accordingly, we agree that either of us may bring this provision to the attention of the Court in requesting the continuance of a hearing scheduled by the other or his/her attorney during the thirty-day waiting period.

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- b. That we will not introduce, as evidence in Court, information disclosed during the Collaborative Law process with respect to the other's behavior or legal position during the process;
- c. That we will not attempt to depose either attorney or neutral expert, or ask or subpoena either attorney or any neutral expert to testify in any court proceeding with regard to matters disclosed during the Collaborative Law process; and
- d. That we will not require the production at any court proceeding of any notes, records, or documents in the attorney's possession or in the possession of any neutral expert. However, once discharged, the attorneys shall return the file to their respective clients, excluding attorney work product.

13.2 **Applicability.** We agree this Confidentiality provision applies to any subsequent litigation, arbitration, or any other method of alternative dispute resolution.

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14.1 We and our attorneys acknowledge that we have read this Agreement, understand its terms and conditions, and agree to abide by them.

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**15.0 PLEDGE**

**WE HEREBY PLEDGE TO COMPLY WITH AND TO PROMOTE THE SPIRIT AND WRITTEN WORD OF THIS PARTICIPATION AGREEMENT.**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Wife (**Jane Doe**)

\_\_\_\_\_  
Husband (**John Doe**)

\_\_\_\_\_  
Attorney for Wife (\_\_\_\_\_)

\_\_\_\_\_  
Attorney for Husband (\_\_\_\_\_)

## **Ground Rules for the Client for the Collaborative Family Law Process**

1. Focus on the problems and concerns at hand. Do not attack each other.
2. Avoid position; rather, express yourself in terms of needs and interests and the outcomes you would like to realize.
3. Work for what you believe is the most constructive and acceptable agreement for both of you and your family.
4. During the four-way meetings with your attorney (both attorneys and both clients are present) remember the following:
  - a) Do not interrupt when the other or their attorney is speaking. You will have a full and equal opportunity to speak on every issue presented for discussion.
  - b) Do not use language that blames or finds fault with the other. Use non-inflammatory words. Be respectful of others.
  - c) Speak for yourself: make "I" statements. Use each other's first name and avoid "he" or "she."
  - d) If you share a complaint, raise it as your concern and follow it up with a constructive suggestion as to how it might be resolved.
  - e) If something is not working for you, please tell your attorney so your concern can be addressed.
  - f) Listen carefully and try to understand what the other is saying without being judgmental about the person or the message.
  - g) Talk with your attorney about anything you do not understand. Your attorney can clarify issues for you.
5. Be willing to commit the time required to meet regularly. Be prepared for each meeting.
6. Be patient — delays in the process can happen even with everyone acting in good faith.

# **COLLABORATIVE LAW**

A PROGRESSIVE APPROACH TO TRADITIONAL ISSUES

# THE EVOLUTION

- Founded in 1990
- Stuart Webb
- Now utilized in more than 40 states, 16 countries
- Appeared in Des Moines in approximately 2004
- Sixth Judicial District in 2010
- Additional groups formed since 2010

# WHAT IS COLLABORATIVE LAW?

- Voluntary Dispute Resolution
  - Focus on Interest-Based Negotiation
  - Series of Four-Way Meetings
  - Governed by Collaborative Participation Agreement
  - Uniform Collaborative Law Act (not yet adopted in Iowa)
- 

# COLLABORATIVE PARTICIPATION AGREEMENT

## Key Elements

- Goals
  - Commitment to Out-of-Court Resolution
  - Cautions
  - Experts
  - Good Faith Negotiation
  - Legal Process
  - Disqualification
  - Confidentiality
- 

# IDENTIFYING A COLLABORATIVE CASE

- Educate the Client
  - Make an Informed Determination as to Process
  - Invite Spouse/Partner
  - Schedule Initial Four-Way Conference
  - Work Toward Resolution
- 

# BENEFITS OF COLLABORATION

1. Client-Centered
2. Less Adversarial
3. Cost-Management
4. Emphasis on Win-Win
5. Voluntary Solutions

# COLLABORATIVE RESOURCES

International Academy of Collaborative Professionals

[www.collaborativepractice.com](http://www.collaborativepractice.com)

Collaborative Lawyers of Eastern Iowa

[www.collaborateiowa.org](http://www.collaborateiowa.org)

Books and Articles

