

COOPERATIVE LAW PROCESS: PARTICIPATION AGREEMENT¹

OBJECTIVE

We are committed to negotiating the resolution of our _____ case cooperatively and reaching a settlement of all issues.

In this process, we are committed to the principles of honesty, cooperation, integrity and civility. We desire to avoid, if at all possible, the negative economic, social, and emotional fallout that is frequently associated with protracted litigation.

PROCESS

We will make every reasonable effort to resolve our case without court intervention.

We agree to use informal discovery rather than formal discovery to promptly and voluntarily disclose relevant information. This will include a sworn statement related to income, assets, liabilities, third party verification or release of records, and/or release of a credit report if requested.

We agree to engage in informal discussions and conferences, including 4-way meetings, with the goal of settling all issues. We agree to consider all methods of dispute resolution contained in Rule 114 of the Minnesota Rules of Practice, including but not limited to mediation, arbitration, and early neutral evaluations.

We recognize that, while the attorneys share a commitment to the process described in this Agreement, this commitment is subject to the following:

- each of the lawyers has an attorney-client relationship solely with, and a professional duty to diligently represent, his or her client and not the other party;
- each lawyer may have confidential and privileged communications with his/her client; and,
- this type of attorney-client communication is not inconsistent with a cooperative law process.

To discourage either party from seeking court intervention, we agree to give each other no less than 20 days notice before unilaterally filing any complaint, motion, petition or other pleading with the court, in order to provide a “cooling-off” period that will enable the parties to re-assess whether court involvement is needed.

The 20 day notice is invoked by sending written notice to opposing counsel, specifying each issue in dispute, the result requested, and the court intervention that will be sought. The 20 day period begins tolling the date the letter is sent.

During this “cooling-off period,” we shall make a good faith effort to resolve the matter with the help of a mediator or neutral evaluator. This paragraph shall not prevent either party from seeking court intervention in the event of exigent circumstances or if there is an agreement that court intervention is necessary. For example, we may agree that filing the petition is appropriate because the parties are seeking a court order referring them to a settlement program, such an early neutral evaluation.

If litigation is necessary, we agree to focus solely on the merits of the particular issue(s). While we recognize that court intervention may be needed at a certain juncture(s) in the case, litigation in and of itself does not terminate this Agreement.

ADVISORY

We understand that there is no assurance or promise that the Cooperative Law Process will be successful in resolving our case.

We understand that the process cannot eliminate concerns about the irreconcilable differences that have led to the current conflict.

We understand that we are each still expected to assert our own interests and that our respective attorneys will help each of us to do so.

PARTICIPATION WITH INTEGRITY

We will work to protect the privacy and dignity of all involved with this process, including parties, children, counsel and any consultants or experts.

We will not disparage each other to colleagues, mutual friends, and acquaintances.

We shall uphold a high standard of integrity and, specifically, shall not take advantage of each other or of miscalculations or inadvertent mistakes of others, but shall acknowledge and correct them.

EXPERTS AND CONSULTANTS

If experts or consultants are needed, we will retain them as Rule 114 neutrals, ensure their payment, and share their work product, prior to either party seeking a second opinion or engaging his/her own expert or consultant.

NEGOTIATION IN GOOD FAITH

The parties acknowledge that each of our attorneys is independent from the other and represents only one party in this process.

We understand that the Cooperative Law Process entails vigorous and good faith negotiation, predicated upon full and honest disclosure.

We will participate in 4-way meetings (parties and counsel) to try to negotiate and resolve our case.

We will take a reasoned position as to each contested issue. We will use our best efforts to advance proposals that meet the fundamental needs of both of the parties. We acknowledge that compromise may be needed in order to reach a settlement of all issues.

Although we may discuss the potential outcome of a litigated result, we will not use the threat of litigation as means to try to force settlement.

THE CHILDREN

The parties agree to make every effort to mediate or otherwise resolve issues related to the custody, care and support of their children.

The parties recognize that inappropriate communications regarding their divorce can be very harmful to their children. The parties agree that they will not discuss contested issues with the children or in the presence of the children.

CONFIDENTIALITY

If subsequent litigation occurs, the parties mutually agree that (a) neither party will introduce as evidence in Court information disclosed to each other during this process, oral or written offers or proposals for settlement, or other statements by any of the parties to the process or their attorneys; and (b) neither party will subpoena the production at any Court proceedings of any notes, records, or documents in the lawyer’s possession or in the possession of one of the consultants.

However, statements or information cannot be protected as confidential if the fact or document is otherwise independently discoverable outside of negotiations.

VOLUNTARY TERMINATION OF THIS PROCESS

Either party may unilaterally and without cause terminate this process by giving written notice of such election to his or her attorney. The attorney must notify the other party and/or counsel by sending written notification of the same.

PLEDGE

BOTH PARTIES AND THEIR ATTORNEYS HEREBY PLEDGE TO COMPLY WITH AND TO PROMOTE THE SPIRIT AND LETTER OF THIS AGREEMENT, UNLESS BOTH PARTIES AND COUNSEL MODIFY THE TERMS OF THIS AGREEMENT IN WRITING.

Petitioner

Respondent

Attorney for Petitioner

Attorney for Respondent

Date

Date

ⁱ This Cooperative Law Process Agreement is adapted from materials developed and utilized by the Boston Law Collaborative, LLC. www.bostonlawcollaborative.com

