STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

OFFICE OF
APPELLATE COURTS

OCT 29 2004

FILED

ORDER ESTABLISHING 12/3/04 DEADLINE FOR SUBMITTING COMMENTS ON PROPOSED AMENDMENTS TO THE GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

The Supreme Court Advisory Committee on the General Rules of Practice for the District Courts has proposed changes to the General Rules of Practice, and this Court will consider the proposed changes without a hearing after soliciting and reviewing comments on the proposed changes.

IT IS HEREBY ORDERED that any individual wishing to provide statements in support or opposition to the proposed changes shall submit twelve copies in writing addressed to the Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, Minnesota 55155, no later than Friday, December 3, 2004. A copy of the committee's report containing the proposed changes is annexed to this order.

Dated: October 27, 2004

BY THE COURT:

Kathleen A. Blatz
Chief Justice

OGURAK LAW & MEDIATION OFFICES, P.A.

Melvin Ogurak
ATTORNEY AT LAW

Supreme Court Qualified Neutral For:
Civil Mediation & Arbitration
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November 12, 2004

OFFICE OF
APPELLATE COURTS

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Clerk of Appellate Courts
25 Rev. Martin Luther King, Jr. Blvd.
St. Paul, Minnesota 55155

RE: Proposed changes to Rule 114

Dear Clerk of Appellate Courts:

I support the inclusion of the following definition at Rule 114.02, as reflected in the ADR Review Board proposed changes to the Supreme Court Committee on the Rules of General Practice, as follows:
"...**(a) ADR Processes....Collaborative Law**....(8) *Collaborative Law.* A process in which parties and their counsel contract in writing to resolve disputes without seeking court action other than approval of a stipulated settlement. The process may include the use of neutrals, depending on the circumstances of the particular case. If the collaborative process ends without a stipulated agreement, the lawyers must withdraw from further representation."

"Rule 114.10 Communication with Neutral ...**(c) Communication to Court During ADR Process** ...(5) A joint letter from opposing counsel who are proceeding collaboratively requesting an exemption from any requirements to appear in court."...**(d) Communications to Court after ADR Process**...(4) That the collaborative process has failed and that the case should be restored to the court's scheduling calendar."

The ADR Review Board Proposed that "Collaborative Law" be made a part of Rule 114. However, the Supreme Court Committee on the Rules of General Practice chose not to allow "Collaborative Law" to be part of Rule 114. I believe this is a mistake.

The cogent reasons for inclusion by the ADR Review Board are quoted as follows:
"The ADR Review Board voted to include collaborative law as a defined form of ADR under Rule 114. The Board recognizes that the General Rules of Practice Committee rejected the

inclusion of collaborative law in this rule in 1996. The Board feels that the use of collaborative law has grown and become more established in the past 8 years. In that time period, collaborative law has been included in court rules in California (see San Francisco Superior Court, Local Rule 11.46) and is recognized by statute in Texas (see Stat. § 6.603 and § 153.0072). Throughout the country, collaborative law is an effective alternative dispute resolution method, resulting in fewer cases that have to go through the traditional court process. If a case is filed and the parties subsequently decide to proceed collaboratively, then without some recognition of this process in court rule it is difficult to request that the court administrator put the case on inactive status while the parties try to reach agreement, rather than being subject to the normal scheduling timelines (see amendments to Rule 114.10 in this regard.). Overall, the ADR Review Board feels it is the appropriate time to recognize and regulate collaborative law in Minnesota...**Rule 114.10 Communication with Neutral**...(c) Communications to Court During ADR Process--Addition of sentence about collaborative law allowing the attorneys to communicate with the court regarding exemption from court timing rules if proceeding collaboratively. Currently there can be confusion about how to interact with the court when the case is proceeding collaboratively but has been filed so timing rules come into play. Throughout Rule 114, creating the formal recognition of collaborative law as a recognized ADR process will give court administrators the ability to put these cases on inactive status until contacted again by the attorneys."

Minnesota is a leader in Family Law ADR. In the most recent publication of "Family Court Focus" Volume 1, Issue 2, Nov. 2004 it states, "Hennepin County District Court, a Family Cour Division, is nationally and internationally known for its dedication to making sure family matters are heard in a fair, timely manner. One recent visitor, Judge Helga Bjornstad of Norway made a special trip to Minneapolis this month to observe initial case conferences and early neutral evaluations..."

Collaborative Law is a mushrooming ADR process throughout America. I urge you to go to the search engine "Google" and seek "Collaborative Law." At the time I did such a search there were "3,760,000" results for Collaborative Law.

Don't allow Minnesota to be behind the curve.

Very truly yours,

OGURAK LAW & MEDIATION OFFICES, P.A.

Melvin Ogurak

Grittner, Fred

From: Johnson, Michael
Sent: Monday, November 01, 2004 3:30 PM
To: Grittner, Fred
Cc: Aldrich, Stephen (Judge)
Subject: FW: notice of proposed amendments to general rules of practice

Sensitivity: Confidential

OFFICE OF
APPELLATE COURTS
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Fred,

Please accept the comments below from Judge Aldrich in response to the General Rules Advisory Committee recommendations. If you need multiple copies please let me know. Thank you.

Mike Johnson

-----Original Message-----
From: Aldrich, Stephen (Judge)
Sent: Monday, November 01, 2004 1:39 PM
To: Johnson, Michael
Cc: 'JamesGuro@aol.com'; 'StuWbb'; gaw@minn.net; Wieland, Lucy (Judge); Larson, Gary (Judge); Swenson, James (Judge); McGunnigle, George (Judge); Peterson, Bruce (Judge); Dickstein, Mel (Judge); Wernick, Mark (Judge); Wexler, Thomas (Judge); Chu, Regina (Judge); Manrique, Tanja (Judge)
Subject: RE: notice of proposed amendments to general rules of practice

Attached is a speech I gave to the Collaborative Divorce training group in 2000. The omission of Collaborative Law as an ADR option -- or at least as a Rule 111 scheduling change -- is a mistake. I hope you will pass this on to the members of the Supreme Court and to the members of the Committee as well.

Collaborative Divorce Talk.doc...

Omitting Collaborative Law must be a product of misunderstanding.

First, when Collaborative Law (hereinafter "CL") works, all the court system does is collect the filing fee and have the agreed-on Findings, etc. signed by a Judge. That seems a no-brainer.

Second, omitting CL as an ADR option means that it will be harder for people to elect a CL option once a case is filed.

Third, if the parties have done CL already, they have already done the kinds of things that other ADR options offer -mediative styles, use of neutrals, etc. If a case fails CL, it probably needs a judge to focus the parties on realistic settlement options.

Fourth, the certification is not needed now. Collaborative Lawyers must already belong to the Collaborative Law Institute and agree to practice within the excellent parameters of that organization. In particular, CL requires both lawyers and parties to sign an agreement that the lawyers will not represent the parties if the matter becomes a contested court proceeding. That discourages the negotiation ploy of "we're going to court" and also eliminates any perception that the lawyers benefit from the parties' disagreements. We already approve negotiation made by lawyers and filed with the court. Collaborative Lawyers try much harder to settle before declaring failure. Parties who try CL should not be forced to a second ADR option with the attendant delay and expense.

Fifth, if needed, I support an automatic placement of CL cases on the inactive calendar for six months, or until at least one party declares the CL failure to the court, in writing, whichever is earlier.

Finally, it seems strange that a program that wins ABA ADR awards, created in Minnesota, has such a hard time in Minnesota Rules. Proof again, perhaps, that prophets are without honor in their own countries.
Stephen C. Aldrich

P.S. The foundation for my opinions is 22 years as a family lawyer including practice all over Minnesota, Fellowship in the Academy of Matrimonial Lawyers since 1981; member of the Collaborative Law Institute from the early 1990's until I was sworn in as a Judge in 1997, and the last seven years as Judge of the Family Court Division. Anybody making decisions about family law as it is now done based upon their experience prior to the early 1990's probably needs to recheck

foundation issues.

P.P.S Below is the material I sent earlier. Please forward the same to the court.

Yes. A speech I gave at one of the Collaborative Divorce trainings is attached. Collaborative Divorce is an expansion of the Collaborative Law concept. The former involves intentional, planned relationships between lawyers, therapists, and financial folks aiding the same clients. Rule 114 doesn't need to make a distinction between the two approaches, which are close "cousins."

Also, at bottom is the report of the ABA award that Stu Webb and Pauline Tesler received from the ABA for the Collaborative Law and Divorce Work.

Finally, by copy of this I am asking Jim Gurovitsch to forward the Collaborative Law Institute's own best description of collaborative law to you.

-----Original Message-----
From: Johnson, Michael
Sent: Tuesday, March 02, 2004 8:13 AM
To: Aldrich, Stephen (Judge); Hanson, Sam
Cc: 'david.herr@maslon.com'; 'BMelendez@faegre.com'; 'G.'; 'Larry'; Larson, Gary (Judge); 'Scott V. Kelly'; Roberts, Timothy; Pagliaccetti, Gary (Judge); Slieter, Randy (Judge); Marben, Kurt; Maas, Ellen (Anoka Judge)
Subject: RE: Rule 114/Collaborative Law

Judge Aldrich,

Is there a desciption of collaborative law that you could forward?

Mike

Michael B. Johnson
Senior Legal Counsel
State Court Administrator's Office
140 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155
Phone: 651.297.7584
Facsimile: 651.297.5636

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The information in this email transmission is legally privilieged and confidential information intended solely for the use of the individual(s) named above. If you, the recipient of this message, are not the intended recipient, you are hereby notified that you should not further disseminate, distribute, or forward this email transmission message. If you have recived this email in error, please immediately notify the sender. thank you for your cooperation.

Following is a copy of the email announcing the award that has been circulating nationally:

American Bar Association Lawyer as Problem Solver Award Honors Stuart Webb and Pauline Tesler

Stuart Webb and Pauline Tesler, creators and promoters of Collaborative Law, will be recognized by the American Bar

Association on August 11th with the Lawyer as Problem Solver Award. The American Bar Association Section of Dispute Resolution created the Lawyer as Problem Solver award to recognize lawyers who in their professional capacities use their lawyering and problem-solving skills to help clients forge creative solutions. The award is given to a member of the legal profession who has exhibited extraordinary skill in either promoting the concept of the lawyer as problem-solver or resolving individual, institutional, community, state, national, or international problems. Recipients will be acknowledged for their use or promotion of collaboration, negotiation, mediation, counseling, decision-making, and problem-solving skills to help clients resolve a problem in a creative and novel way.

The Lawyer as Problem Solver Awards Luncheon will take place on August 11th, during the American Bar Association Annual Meeting in Washington, D.C.

Stuart Webb, a family law practitioner in Minnesota, developed the idea of collaborative law in 1989 and proceeded to create the first Collaborative Law group. He and three other lawyers in Minneapolis, frustrated by the unnecessary acrimony and legal expense associated with the divorce process, sought to solve the problem by creating a new method of practice. They agreed that they would take cases solely for purposes of settlement. They developed a Collaborative Law Process Agreement, to be signed by both the parties and their lawyers, which provides that if settlement negotiations fail and the case needs to go to court, the lawyers will withdraw from the case and refer the matter to other counsel. This technique gave both clients and their attorneys a strong incentive to work cooperatively toward settlement. Webb's initial group -- the Collaborative Law Institute - now consists of more than forty lawyers in Minneapolis, and the movement he started has grown to the point where there are Collaborative Law groups -- ranging from a few dozen to more than one hundred lawyers -- in at least twenty states in the U.S. and most of the Canadian provinces. (For a listing, see <www.collabgroup.com>.)

Pauline Tesler, a family law practitioner from California, has been one of the leading teachers and trainers of Collaborative Law. In addition to creating this country's second Collaborative Law group (in the San Francisco area) in the early 1990s, and leading the International Academy of Collaborative Professionals, Tesler has trained thousands of lawyers in the problem-solving techniques that Collaborative Law practitioners have developed - such as the use of neutral experts, conducting negotiations in a series of four-way meetings with full client participation, promoting interest-based negotiation, and training lawyers and clients in collaborative communication skills. Tesler's contributions to the field can be seen in her numerous publications about collaborative law, including her recent book, published by the ABA, entitled "Collaborative Law: Achieving Effective Resolution in Divorce without Litigation (ABA Press, 2001). See also "Collaborative Law: A New Paradigm for Divorce Lawyers," 5 Psychology, Public Policy, and Law 967 (1999); "Collaborative Law: A New Approach to Family Law ADR," 2 Conflict Mgmt. 12 (1996).

Collaborative Law fosters a multi-disciplinary approach to solving the complex emotional and financial problems associated with divorce and other disputes. Many practitioners of Collaborative Law work closely with mental health professionals and accountants in their cases to create a team that supports practical, interest-based solutions.

....

The Lawyer as Problem Solver Awards Luncheon will be held on August 11th from 11:45 AM - 1:30 PM in the Diplomat Room of the Omni Shoreham Hotel in Washington, DC.

To register for the ABA Annual Meeting and the Lawyer as Problem Solver Awards Luncheon, see <http://www.expoedge.com/its/aba2002/choices.asp>.

For more information, call (202) 662-1680.

Gina Viola Brown
Coordinator of ADR Research, Policy Analysis, and Law School Programs
ABA Section of Dispute Resolution
740 15th St. NW
Washington, DC 20005
Phone: (202) 662-1677
Fax: (202) 662-1683
Web: <http://www.abanet.org/dispute>

Remarks of The Honorable
Stephen C. Aldrich for the
Collaborative Divorce
Training Group
May 20, 2000

FIRST: DO NO HARM

Thank you for inviting me to encourage you in your efforts at making the divorce process an event instead of a tragedy

First, I wish to suggest a mantra that may be helpful to those of you who do not practice Bhuddism. It is the first principle of the Hippocratic Oath for medical doctors—"First, do no harm."

That phrase sums up much of what you are trying to do; I applaud you for teaching and learning about this weekend. You want the process of divorce not add to the pain that the parties and their children and extended families have already experienced before they come to your collaborative divorce practice with three doors—one each for the lawyer, therapist, and financial expert.

I want to place your work in context, quibble with a few points on the margins, tell you when to fire yourselves, and embarrass Stu Webb for a high and lofty purpose.

Context. You stand in the line of, and are extending a civilizing process that begins with the Code of Hammurabi and the Book of Judges in what Christians call the Old Testament. Law was an improvement over blood feuds. Parliamentary debate ensures that all get heard, and is check on tyranny and a substitute for marching armies.

You also stand in the tradition of the inventors of double entry bookkeeping, the Fuggers of Italy, who allowed us to keep track of what is fair and whose money is it anyway.

You also stand in the tradition of American lawyers like Abraham Lincoln as he is quoted in your materials. Before William James and Freud invented psychology, Lincoln said,

> ***"Discourage litigation. Persuade neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser in fees, expenses, and waste of time. As a peacemaker, the lawyer has a superior opportunity of becoming a good (human being)."***

I remind us all that, before Collaborative Divorce was created, many lawyers, therapists, and financial experts were forming *ad hoc* teams for the resolution of conflicted marriages.

The creative genius of your effort has four parts, I believe--

Part I:	You agree, even though you have lawyers, to avoid court.
Part II:	You present an organized way of doing business that is attractive to potential clients and will expand demand for collaboration.
Part III:	You reduce the conflict between lawyers and therapists for the revenue stream that flows from the wounds of marriages.
Part IV:	The total moneys spent are usually less than would be spent on a Divorce supervised by a court.

Congratulations on your important and continuing contribution to the humanizing of our society.

Quibbles. You know you are doing something important when a judge of a court of general jurisdiction wants to argue with you about how you do your job. I *first* note that, contrary to page one of the otherwise, fine book by your presenters, divorce *is always* a gut-wrenching process for the clients. They separate to reduce that pain. What you offer is to "do no harm" by the process of completing the separation. A well-done divorcing process yours or mine, can, in fact, relieve that gut-wrenching pain that leads to divorce.

My **second quibble** is that the adversary lawyer you describe is mostly a straw man and to the extent such lawyers exist, already a vanishing breed. Collaborative styles of divorce are winning the day. The divorce bombers of 30 years ago are in retreat all around you. I urge you to be inclusive of those best professionals who since Lincoln's time have been practicing traditional law in a collegial, collaborative, and gentile manner. Minnesota's Collaborative Law Institute genially includes lawyers who practice both collaboratively and in the courtroom. I urge you to slay the real dragons and to seek allegiances with other who are working to alleviate the pain of divorce. When I read the differences between Adversarial and Collaborative lawyering, I realized that I had been practicing in a collaborative style since 1975 and, while being an advocate, rarely wandered into your left hand column.

In that same line, you do remember that mediators, collaborative lawyers without teams, those in Divorce with Dignity, the best of advocacy lawyers, and humane judges are on your side in the civilizing process you seek to advance. When you say on page nine that "Currently available methods don't provide people with the kind of help they need to solve the many problems of divorce," you slight the good work on behalf of clients who settle their case in lawyer's offices for $1,000.00 and are referred to the experts and therapists needed along the way.

I urge you to remember that advocates are not always, and do not have to be, jerks. And, when a humorless bureaucrat goes after one of your professional licenses, you will be glad to have a gladiator on your side, especially if that gladiator advocates without giving unneeded offense.

As you note, good lawyers especially bring to the table (1)precision of analysis, (2)careful thinking, and (3)creative alternative generation on which society depends. Do

not drive away allies by lumping the late Phil Arzt with your favorite Divorce Bomber. (Read his memorial by Gary Weissman on the table over there and rejoice that he cared for his clients.)

My *third quibble* is that it *is* the work of lawyers to deal with emotions, contrary to page two of the otherwise fine book. My proof is the article on "Troublesome Clients" that is on the table over there. Lawyer must deal with emotions--their own, their clients, their judges, and their experts and therapists every day. Indeed, we need family lawyers to be more sophisticated in the ways of human emotions. You would better say that lawyers should not do therapy and should refer such problems to the right expert early on.

Fire yourselves (or avoid the case) when—

1. One of the clients is not truthful about important facts.
2. One of the clients refuses to cooperate in the ready exchange of information
3. The other lawyer is only pretending to be collaborative and is seeking advantage by that pretense
4. There is abuse of children with no hope of repentance
5. When the parties need controlled venting before they can move forward (see article on the table, "Try a Different Custody Case")
6. The major issue in the case is that a client is hiding major assets.
7. When determining who did what in the past is the most important factor to an equitable result [There are no better ways to determine truth-telling than the clash of a well handled adversary process.]
8. Generally, when there is no other way to defend important boundaries.

You, judges, and the good lawyers who are not here today have in common that we do "Work together to prevent unnecessary escalation of conflict." I am glad you are taking cases away from my court. There is plenty of work left for me to do.

Embarrassing Stu Webb. Stu Webb, I promise that if you ever invite me to speak again, I will not embarrass you like I do today.

Minnesotans often think that every good idea comes from here. And we suffer whenever we hear that all that is new comes from either New York or California. You know the line—things start on the coasts and get to the middle five years later.

I want it known now, that Collaborative Law began in Minnesota before 1990 when Stu Webb was on his Road to Damascus. You Californians, while welcome aboard and having added the team concept, were five years behind us. And I know that when your book gets its well deserved second printing, you folks will want to dedicate it to the humane man who keeps gently pestering us to join in. Stu, please stand up and be recognized for the gentle revolutionary you are.

Expand your good work, make a good living doing so, and take work from our courts. Thank you for that and for letting me push you forward.

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Conflict Studies

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December 2, 2004

Clerk of the Appellate Courts
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: CX-89-1863
Recommendations of Minnesota Supreme Court
Advisory Committee on General Rules of Practice

Dear Clerk and Members of the Court,

The ADR Section of the Minnesota State Bar Association appreciates this opportunity to comment on the recommendations forwarded to you by the Committee on General Rules of Practice in its report, dated October 28, 2004.

Our focus is on proposed changes to Rules 114 and 111. On February 2, 2004, our section submitted comments to the ADR Review Board. In September, 2004, we renewed our comments to the General Rules committee. We appreciate the serious consideration the ADR Review Board and General Rules Committee have given our comments. We acknowledge the recommendations that already have been incorporated into the proposed final recommendations. We note that several specific recommendations were not incorporated into the final language that we believe warrant further attention before final passage of the rules. Our specific comments follow:

Rule 114.02 (a) (1): We previously commented that the inclusion of the reference to "counsel" is an unnecessary limitation and may be confusing. For example, in family law cases, arbitration often proceeds without counsel on various types of matters. This raises the question whether an arbitral proceeding without counsel is, in fact, "arbitration." We recommend elimination of the term "counsel" or, in the alternative, a clarifying comment to the effect that "reference to "counsel" does not preclude parties from representing themselves in arbitration proceedings."

Rule 114.02 (a) (5): We have previously commented that the proposed language which affords the right to appeal to the Minnesota Court of Appeals appears to conflict with Minn. Stat. § 484.74 subd. 2. This statute provides that a consensual special magistrate decision goes to the presiding judge, whose decision becomes final and gives rise to the right to an appeal. We renew our comment and request the conflict be addressed.

1536 Hewitt Avenue, Saint Paul, MN 55104-1284 • 651-523-2411 • 651-523-2236 fax
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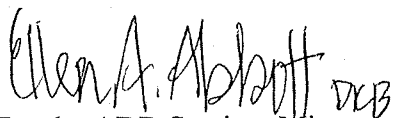
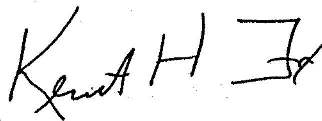
Rule 114.02 (a) (5): We have previously commented that the inclusion of the language "liability, damages or both" is too limiting. There are a range of other issues other than liability or damages which could be subject to an advisory opinion. Examples include spousal support and even school attendance, among others. We recommend not including this limiting language and, instead, simply stating "The neutral(s) then issues a non-binding advisory opinion."

Rule 111.05 (b) (Collaborative law): The issue of promulgating a separate rule regarding collaborative law appears to have merit in addressing the concerns previously expressed by the ADR Section (please see our February 2, 2004 letter for a more in-depth expression of our concerns). However, the promulgation of a separate rule for collaborative law is an issue that has not been vetted by the ADR Section. We recommend the Court invite comment from as broad a cross-section of the bar (including the ADR Section) and other stake-holders as possible prior to adopting any new rule.

We again thank the ADR Review Board, the Committee on General Rules and the Court for their work and the opportunity to provide input into this important process.

Very truly yours,





For the ADR Section, Minnesota State Bar Association

Ellen A. Abbott, Chair

(612) 305-4404
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APPELLATE COURTS

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November 29, 2004

FREDERICK K GRITTNER
CLERK OF APPELLATE COURTS
25 REV DR MARTIN LUTHER KING
JR BOULEVARD
ST PAUL MN 55155

Re: Proposed Amendments to the General Rules of Practice for the District Courts

Dear Mr. Grittner:

I am writing in my capacity as the current President of the Collaborative Law Institute, a Minnesota non-profit corporation.

The Collaborative Law Institute was formed in 1990 to promote the resolution of family and other disputes, including divorce issues in a collaborative way with dignity and legal support; and to promote, support and nurture the development of a body of lawyers practicing collaborative law.

Collaborative practice is growing by leaps and bounds. There are now over 100 groups of collaborative professionals across the country and in Canada, and the movement is gaining momentum in England, Ireland, Switzerland, Australia and Russia.

Approximately three years ago a group of collaborative lawyers and other collaborative professionals formed the International Academy of Collaborative Professionals (IACP), which serves as an umbrella group for collaborative professionals throughout the world. The IACP developed standards for training in collaborative practice as well as ethical standards. A diverse committee from across the country worked for over a year developing these standards.

The Collaborative Law Institute fully supports the ADR Review Board's recommendation to amend Rule 114 to include collaborative law as a means of Court annexed ADR under Rule 114 and is opposed to the recommendation of the Supreme Court Advisory Committee on the Rules of General Practice of the District Courts that collaborative law be deleted from the proposed amendments to Rule 114.

In collaborative law practice, the lawyers and parties to a dispute agree to resolve their conflict

using cooperative strategies rather than adversarial techniques and litigation. The parties and their lawyers sign an agreement that they will not go to Court. Collaborative law has been used successfully in Minnesota since 1990, when Minnesota lawyer Stuart Webb initiated the idea and began practicing collaborative law. It has been recognized as a valuable ADR process by the American Bar Association, which published a handbook describing the process and answering common questions asked about the practice. I have enclosed a copy of the handbook for your reference.

In 2002, two collaborative lawyers, Pauline Tesler of San Francisco and Stuart Webb of Minneapolis were awarded the American Bar Association's first Lawyer as Problem Solver award for their contributions in making this dispute resolution process available. Pauline Tesler's book, Collaborative Law: Achieving Effective Resolution in Divorce Without Litigation, published by the ABA Section of Family Law in 2001 provides a comprehensive discussion about collaborative law and the details of its process and practice.

I have also enclosed a summary from the Collaborative Law Institute's Principle of Collaborative Law and Guidelines for the Practice of Collaborative Law. Collaborative law has provided benefits to individuals and families in Minnesota for more than a decade and it is an option that should be made available through the ADR Rule 114 process. It is a classic alternative dispute resolution process – one in which lawyers and clients agree to avoid litigation and to focus on reaching an agreement on all issues in their divorce and other family law dispute. In some collaborative cases, neutral professionals, such as child psychologists and financial specialists, are used as additional resources for the clients and attorneys. Often in situations where the parties are at impasse, collaborative lawyers bring mediators into the process. In fact, there are several mediators who are members of the Collaborative Law Institute. The fact that a neutral is not always used in the process does not make collaborative law any the less of an alternate dispute resolution method.

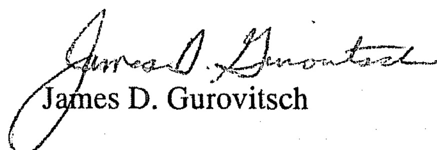
Individuals and families should have available to them as many viable alternate dispute resolution options as possible so they can choose the process best suited to their needs. There are some individuals for whom mediation does not work or may not be appropriate and who may prefer to have an advocate with them during the process. This may occur where there is a power imbalance in the marital relationship or other issues which may require an advocate.

The amendments to Rule 114 that were proposed by the ADR Review Board for the inclusion of collaborative law contain specific ethical and training obligations for collaborative lawyers. These requirements were drafted with input from members of the Collaborative Law Institute and provide for training levels similar to the other ADR professionals trained under Rule 114. The Collaborative Law Institute supports the inclusion of these standards. Collaborative attorneys remain advocates for their clients and are subject to the Lawyers Code of Professional

Responsibility. Family law lawyers are not certified as specialists in the State of Minnesota and there is no reason why collaborative family lawyers should be put in a separate category that requires certification or supervision through the Legal Certification Board and the Lawyers Board of Professional Responsibility. As an organization, we are committed to providing high quality training for practitioner in Minnesota. We recently sponsored a two-day collaborative law training in April 2004 that was attended by approximately 50 practitioners. Members are required to attend ongoing training programs in order to retain their membership in the Collaborative Law Institute.

Collaborative law originated in Minnesota and is now on the cutting edge of alternative dispute resolution practice all across the country. On behalf of the Collaborative Law Institute, I would urge the inclusion of collaborative law in the proposed amendments to Rule 114.

Respectfully submitted,



James D. Gurovitsch

JDG/je
Encs.

APPENDIX C

HANDBOOK FOR CLIENTS

AN ORIENTATION TO THE DIVORCE PROCESS, THE DISPUTE-RESOLUTION OPTIONS AVAILABLE TO CLIENTS, AND THE NEW DISPUTE-RESOLUTION OPTION, "COLLABORATIVE LAW."

©2001 American Bar Association

1. **What are my choices for professional help in my divorce?**

   All divorces involve decisions and choices. Which professionals will assist you, and how you will utilize their help, are decisions that can powerfully affect whether your divorce moves forward smoothly or not.

   Some couples resolve all their divorce issues without any professional assistance at all, and process their own divorce papers themselves through the courts. On the other end of the spectrum, some couples engage in drawn-out courtroom battles that cost dearly in emotional and financial resources and can take considerable time to complete. Most people find their needs fall between these extremes.

This "Appendix C: Handbook for Clients," appearing on pages 221–234 may be duplicated and distributed by law firms for the sole purpose of distribution to the firm's family law clients. It may not be altered, edited, or modified in any way, and all copies must contain the ABA copyright notice that appears on this page. No fee may be charged to clients for duplication or distribution of these pages.

Below are the choices for obtaining professional legal services in divorce that are available in most localities today. The list moves from choices involving the least degree of professional intervention, and the most privacy and client control, to choices involving greater professional intervention and the least privacy and control.

Unbundled Legal Assistance: The client in this model acts as a "general contractor" and takes primary responsibility for the divorce, making use of legal counsel on an "as needed" basis for help in resolving specific issues, drafting papers, and so forth. The lawyer doesn't take over responsibility for managing the case.

Mediation: A single neutral person, who may be a lawyer, a mental health professional, or simply someone with an interest in mediation, acts as the mediator for the couple. The mediator helps the couple reach agreement, but does not give individual legal advice, and may or may not prepare the divorce agreement. Few mediators will process the divorce through the court. Retaining your own lawyer for independent legal advice during mediation is generally wise. In some locales the lawyers sit in on the mediation process, and in other locales they remain outside the mediation process. Mediators do not have to have to be licensed professionals in most jurisdictions.

Collaborative Law: Each person retains his or her own trained collaborative lawyer to advise and assist in negotiating an agreement on all issues. All negotiations take place in "four-way" settlement meetings that both clients and both lawyers attend. The lawyers cannot go to court or threaten to go to court. Settlement is the only agenda. If either client goes to court, both collaborative lawyers are disqualified from further participation. Each client has built-in legal advice and advocacy during negotiations, and each lawyer's job includes guiding the client toward reasonable resolutions. The legal advice is an integral part of the process, but all the decisions are made by the clients. The lawyers generally prepare and process all papers required for the divorce.

Conventional Representation: Each person hires a lawyer. The lawyers may be good at settling cases, in which case they work toward that goal at the same time that they prepare the case for the possibility of trial. If the lawyers are not particularly good at, or interested in, settling the case all lawyer efforts are aimed solely at preparing for trial, though a settlement may still result at or near the time of trial. Either way, the pacing and objectives of the legal representation tend to be dictated by what happens in court. Cases handled this way generally involve higher legal fees, and take longer to complete, than collaborative law cases or mediated cases. The risk of a high conflict divorce is higher than with mediation or collaborative law.

Arbitration, Private Judging, and Case Management: In some states, it is possible for clients and their lawyers to choose

private judges or arbitrators who will be given the power to make certain decisions for the clients as an alternative to taking the case into the public courts. Case management is an option available from private and some public judges, in which the judge is given the power to manage the procedural stages of pretrial preparation, as well as settlement conferences, by agreement of the clients and their lawyers. These options can reduce somewhat the financial cost and delays associated with litigation in the public courts. The financial and emotional costs may still remain high, however, because positions are polarized and the lawyers have no particular commitment to settlement as the preferred goal, and continue to represent the client whether the case settles or goes to trial.

"War": One or both parties is motivated primarily by strong emotion (fear, anger, guilt, etc.) and as a consequence the parties take extreme, black and white positions and look to the courts for revenge or validation. Reasonable accommodations are not made. The attorneys often function as "alter egos" for their clients instead of counseling the clients toward sensible solutions. This is the costliest form of dispute resolution, emotionally and financially. It is always destructive for the children involved. Such cases can drag on for many years. Few clients report satisfaction with the outcome of cases handled this way, regardless of who won.

2. **Can you say more about Collaborative Law?**

Collaborative law is the newest divorce dispute-resolution model. In collaborative law, both parties to the divorce retain separate, specially trained lawyers whose only job is to help them settle the case. If the lawyers do not succeed in helping the clients resolve the issues, the lawyers are out of a job and can never represent either client against the other again. All participants agree to work together respectfully, honestly, and in good faith to try to find win-win solutions to the legitimate needs of both parties. Four creative minds work together to devise individualized settlement scenarios. No one may go to court, or even threaten to do so, and if that should occur, the collaborative law process terminates and both lawyers are disqualified from any further involvement in the case. Lawyers hired for a collaborative law representation can never under any circumstances go to court for the clients who retained them.

3. **Is Collaborative Law only for divorces?**

Collaborative lawyers can do everything that a conventional family lawyer does except go to court. They can negotiate non-marital custody agreements, premarital and postnuptial agreements, and agreements terminating gay and lesbian relationships. Collaborative Law can also be used in probate disputes, business partnership dissolutions, employment and commercial disputes—wherever disputing parties want a contained, creative, civilized process that builds in legal counsel

and distributes the risk of failure to the lawyers as well as the clients.

4. **What is the difference between Collaborative Law and mediation?**

   In mediation, there is one neutral professional who helps the disputing parties try to settle their case. Mediation can be challenging where the parties are not on a level playing field with one another, because the mediator cannot give either party legal advice, and cannot help either side advocate its position. If one side or the other becomes unreasonable or stubborn, or lacks negotiating skill, or is emotionally distraught, the mediation can become unbalanced, and if the mediator tries to deal with the problem, the mediator may be seen by one side or the other as biased, whether or not that is so. If the mediator does not find a way to deal with the problem, the mediation can break down, or the agreement that results can be unfair. If there are lawyers for the parties at all, they may not be present at the negotiation and their advice may come too late to be helpful. Collaborative Law was designed to deal with these problems, while maintaining the same absolute commitment to settlement as the sole agenda. Each side has legal advice and advocacy built in at all times during the process. Even if one side or the other lacks negotiating skill or financial understanding, or is emotionally upset or angry, the playing field is leveled by the direct participation of the skilled advocates. It is the job of the lawyers to work with their own clients if the clients are being unreasonable, to make sure that the process stays positive and productive.

5. **How is Collaborative Law different from the traditional adversarial divorce process?**

   - In Collaborative law, all participate in an open, honest exchange of information. Neither party takes advantage of the miscalculations or mistakes of the others, but instead identifies and corrects them.
   - In Collaborative law, both parties insulate their children from their disputes and, should custody be an issue, they avoid the professional custody evaluation process.
   - Both parties in collaborative law use joint accountants, mental health consultants, appraisers, and other consultants, instead of adversarial experts.
   - In collaborative law, a respectful, creative effort to meet the legitimate needs of both spouses replaces tactical bargaining backed by threats of litigation.
   - In collaborative law, the lawyers must guide the process to settlement or withdraw from further participation, unlike adversarial lawyers, who remain involved whether the case settles or is tried.
   - In collaborative law, there is parity of payment to each lawyers so that neither party's representation is

disadvantaged vis-a-vis the other by lack of funds, a frequent problem in adversarial litigation.

6. **What kind of information and documents are available in the collaborative law negotiations?**

Both sides sign a binding agreement to disclose all documents and information that relate to the issues, early and fully and voluntarily. "Hide the ball" and stonewalling are not permitted. Both lawyers stake their professional integrity on ensuring full, early, voluntary disclosure of necessary information.

7. **What happens if one side or the other does play "hide the ball," or is dishonest in some way, or misuses the Collaborative Law process to take advantage of the other party?**

That can happen. There are no guarantees that one's rights will be protected if a participant in the collaborative law process acts in bad faith. There also are no guarantees in conventional legal representation. What is different about collaborative law is that the collaborative agreement requires a lawyer to withdraw upon becoming aware his/her client is being less than fully honest, or participating in the process in bad faith.

For instance, if documents are altered or withheld, or if a client is deliberately delaying matters for economic or other gain, the lawyers have promised in advance that they will withdraw and will not continue to represent the client. The same is true if the client fails to keep agreements made during the course of negotiations, for instance an agreement to consult a vocational counselor, or an agreement to engage in joint parenting counseling.

8. **How do I know whether it is safe for me to work in the Collaborative Law process?**

The collaborative law process does not guarantee you that every asset or every dollar of income will be disclosed, any more than the conventional litigation process can guarantee you that. In the end, a dishonest person who works very hard to conceal money can sometimes succeed, because the time and expense involved in investigating concealed assets can be high, and the results uncertain. However, far greater efforts to track down concealed assets and income can be expected in conventional litigation than in collaborative law, which relies upon voluntary disclosure.

You are generally the best judge of your spouse or partner's basic honesty. If s/he would lie on an income tax return, he or she is probably not a good candidate for a Collaborative Law divorce, because the necessary honesty would be lacking. But if you have confidence in his or her basic honesty, then the process may be a good choice for you. The choice ultimately is yours.

9. **Is Collaborative Law the best choice for me?**

It isn't for every client (or every lawyer), but it is worth considering if some or all of these are true for you:

a) You want a civilized, respectful resolution of the issues.
b) You would like to keep open the possibility of friendship with your partner down the road.
c) You and your partner will be co-parenting children together and you want the best coparenting relationship possible.
d) You want to protect your children from the harm associated with litigated dispute resolution between parents.
e) You and your partner have a circle of friends or extended family in common that you both want to remain connected to.
f) You have ethical or spiritual beliefs that place high value on taking personal responsibility for handling conflicts with integrity.
g) You value privacy in your personal affairs and do not want details of your problems to be available in the public court record.
h) You value control and autonomous decision making and do not want to hand over decisions about restructuring your financial and/or child-rearing arrangements to a stranger (i.e., a judge).
i) You recognize the restricted range of outcomes and "rough justice" generally available in the public court system, and want a more creative and individualized range of choices available to you and your spouse or partner for resolving your issues.
j) You place as much or more value on the relationships that will exist in your restructured family situation as you place on obtaining the maximum possible amount of money for yourself.
k) You understand that conflict resolution with integrity involves not only achieving your own goals but finding a way to achieve the reasonable goals of the other person.
l) You and your spouse will commit your intelligence and energy toward creative problem solving rather than toward recriminations or revenge—fixing the problem rather than fixing blame.

10. **My lawyer says she settles most of her cases. How is collaborative law different from what she does when she settles cases in a conventional law practice?**

Any experienced collaborative lawyer will tell you that there is a big difference between a settlement that is negotiated during the conventional litigation process, and a settlement that takes place in the context of an agreement that there will be no court proceedings or even the threat of court. Most conventional family law cases settle figuratively, if not literally, "on the courthouse steps." By that time, a great deal of money has been spent, and a great deal of emotional damage can have been caused. The

settlements are reached under conditions of considerable tension and anxiety, and both "buyer's remorse" and "seller's remorse" are common. Moreover, the settlements are reached in the shadow of trial, and are generally shaped largely by what the lawyers believe the judge in the case is likely to do.

Nothing could be more different from what happens in a typical collaborative law settlement. The process is geared from day one to make it possible for creative, respectful collective problem solving to happen. It is quicker, less costly, more creative, more individualized, less stressful, and overall more satisfying in its results than what occurs in most conventional settlement negotiations.

11. Why is collaborative law such an effective settlement process?

Because the collaborative lawyers have a completely different state of mind about what their job is than traditional lawyers generally bring to their work. We call it a "paradigm shift." Instead of being dedicated to getting the largest possible piece of the pie for their own client, no matter the human or financial cost, collaborative lawyers are dedicated to helping their clients achieve their highest intentions for themselves in their post-divorce restructured families.

Collaborative lawyers do not act as a hired guns, nor do they take advantage of mistakes inadvertently made by the other side, nor do they threaten, or insult, or focus on the negative either in their own clients or on the other side. They expect and encourage the highest good-faith problem-solving behavior from their own clients and themselves, and they stake their own professional integrity on delivering that, in any collaborative representation they participate in.

Collaborative lawyers trust one another. They still owe a primary allegiance and duty to their own clients, within all mandates of professional responsibility, but they know that the only way they can serve the true best interests of their clients is to behave with, and demand, the highest integrity from themselves, their clients, and the other participants in the collaborative process.

Collaborative Law offers a greater potential for creative problem solving than does either mediation or litigation, in that only collaborative law puts two lawyers in the same room pulling in the same direction with both clients to solve the same list of problems. Lawyers excel at solving problems, but in conventional litigation they generally pull in opposite directions. No matter how good the lawyers may be for their own clients, they cannot succeed as Collaborative Lawyers unless they also can find solutions to the other party's problems that both clients find satisfactory. This is the special characteristic of collaborative law that is found in no other dispute resolution process.

12. **What if my spouse and I can reach agreement on almost everything, but there is one point on which we are stuck. Would we have to lose our Collaborative Lawyers and go to court?**

In that situation it is possible, if everyone agrees (both lawyers and both clients), to submit just that one issue for decision by an arbitrator or private judge. We do this with important limitations and safeguards built in, so that the integrity of the collaborative law process is not undermined. Everyone must agree that the good faith atmosphere of the collaborative law process would not be damaged by submitting the issue for third party decision, and everyone must agree on the issue and on who will be the decision maker.

13. **What if my spouse or partner chooses a lawyer who doesn't know about Collaborative Law?**

Collaborative lawyers have different views about this. Some will "sign on" to a collaborative representation with any lawyer who is willing to give it a try. Others believe that is unwise and will not do that.

Trust between the lawyers is essential for the collaborative law process to work at its best. Unless the lawyers can rely on one another's representations about full disclosure, for example, there can be insufficient protection against dishonesty by a party. If your lawyer lacks confidence that the other lawyer will withdraw from representing a dishonest client, it might be unwise to sign on to a formal collaborative law process (involving disqualification of both lawyers from representation in court if the collaborative law process fails).

Similarly, collaborative law demands special skills from the lawyers—skills in guiding negotiations, and in managing conflict. Lawyers need to study and practice to learn these new skills, which are quite different from the skills offered by conventional adversarial lawyers. Without them, a lawyer would have a hard time working effectively in a collaborative law negotiation.

And some lawyers might even collude with their clients to misuse the collaborative law process, for delay, or to get an unfair edge in negotiations. For these reasons, some lawyers hesitate to sign on to a formal collaborative law representation with a lawyer inexperienced in this model. That doesn't mean your lawyer could not work cordially or cooperatively with that lawyer, but caution is advised in signing the formal agreements that are the heart of collaborative law where there is no track record of mutual trust between the lawyers. You and your spouse will get the best results by retaining two lawyers who both can show that they have committed to learning how to practice collaborative law by obtaining training as well as experience in this new way of helping clients through divorce.

14. **Why is it so important to sign on formally to the official Collaborative Law Agreement? Why can't you work collaboratively with the other lawyer but still go to court if the process doesn't work?**

The special power that Collaborative Law has to spark creative conflict resolution seems to happen only when the lawyers and the clients are all pulling together in the same direction, to solve the same problems in the same way. If the lawyers can still consider unilateral resort to the courts as a fallback option, their thought processes do not become transformed; their creativity is actually crippled by the availability of court and conventional trials. Only when everyone knows that it is up to the four of them and only the four of them to think their way to a solution, or else the process fails and the lawyers are out of the picture, does the special "hypercreativity" of collaborative law get triggered. The moment when each person realizes that solving both clients' problems is the responsibility of all four participants is the moment when the magic can happen.

Collaborative law is not just two lawyers who like each other, or who agree to "behave nicely." It is a special technique that demands special talents and procedures in order to work as promised.

Any effort by parties and their lawyers to resolve disputes cooperatively and outside court is to be encouraged, but only collaborative law is collaborative law.

15. **How do I find a collaborative lawyer?**

You can check the yellow pages and contact your local bar association to see if there are listings of collaborative lawyers in your area. You can contact the International Academy of Collaborative Professionals (web site: http://www.collabgroup.com) to inquire about collaborative lawyers near you. Find the best collaborative practitioner that you can; interview several, and ask for resumes. Ask how many collaborative cases the lawyer has handled and how many of them terminated without agreements. Ask what training the lawyer has in Collaborative Law, alternate dispute resolution, and conflict management.

16. **How do I enlist my spouse in the process?**

Talk with your spouse, and see whether there is a shared commitment to collaborative, win-win conflict resolution. Share materials with your spouse such as this handbook and articles that discuss collaborative law. Encourage your spouse to select counsel who has experience and training in collaborative law and who works effectively with your own lawyer: lawyers who trust one another are an excellent predictor of success in dispute resolution.

17. **How long will my divorce take if I use collaborative law?**

The collaborative law process is flexible and can expand or contract to meet your specific needs. Most people require from three to seven of the four-way negotiating meetings to resolve all issues, though some divorces take less and some take more. These meetings can be spaced with long intervals between, or close together, depending on the particular needs of the clients. Once the issues are resolved, the lawyers will complete the paperwork for the divorce. Time limits and requirements for divorce vary from state to state; ask your lawyer.

18. **How expensive is collaborative law?**

Collaborative lawyers generally charge by the hour as do conventional family lawyers. Rates vary from locale to locale and according to the experience of the lawyer.

No one can predict exactly what you will pay for this kind of representation because every case is different. Your issues may be simple or complex; you and your partner may have already reached agreement on most, or none, of your issues. You may be very precise or very casual in your approach to problems. You and your partner may be at very different emotional stages in coming to terms with separating from one another. What can be said with confidence is that no other kind of professional conflict resolution assistance is consistently as efficient or economical as collaborative law for as broad a range of clients. While the cost of your own fees cannot be predicted accurately, a rule of thumb is that collaborative law representation will cost from one tenth to one twentieth as much as being represented conventionally by a lawyer who takes issues in your case to court.

19. **Isn't mediation cheaper because only one neutral, instead of two lawyers, has to be paid?**

No, mediation is not usually cheaper. Because there is nobody in a mediation negotiation whose job it is to help the client refine issues and participate with maximum effectiveness in the process, mediation can become stalled more easily than collaborative law does. Mediations can take longer, and can involve more wheel-spinning, than collaborative law negotiations. They also can be at greater risk for falling apart entirely, since

the mediator must remain neutral and cannot work privately with the more disturbed client to get past impasses. In either event, the resulting inefficiencies can be costly.

Also, most mediators strongly urge that independent lawyers for each party review and approve the mediated agreement. If the lawyers have not been a part of the negotiations, the lawyers may be unhappy with the results and a new phase of negotiations or even litigation may result. If the lawyers do participate, then three professionals are being paid in the mediation.

Lawyers who do both mediation and collaborative law typically see collaborative law as the model that offers greatest promise of successful outcome for the broadest range of divorcing couples. Of course, if two calm and reasonable people whose issues are not complex go to a mediator, they can usually achieve agreement efficiently and often at low cost. Generally, it is only after the fact that we know that a couple was well-suited for mediation. Strong feelings arise unexpectedly; issues become more complicated than anyone anticipated. Collaborative law can usually deal with these predictable happenings more readily than can mediation.

Many people genuinely believe that they will have a very quick and simple divorce negotiation, but life can be surprising. Many people prefer to have a process in place from the start that is well-equipped to deal with unexpected problems rather than to have to terminate a mediation and start over with litigation counsel.

20. How does the cost of collaborative law compare with the cost of litigation?

Litigation is, quite simply, the most expensive way of resolving a dispute. By way of illustration, it is common for litigated divorces to begin with a motion for temporary support. The result is exactly that—a temporary order, not any final resolution of any issues. It is not uncommon for a single temporary support motion to cost as much or more in lawyers' fees and costs as it costs for an entire collaborative law representation.

— END —

PRINCIPLES OF COLLABORATIVE LAW

Collaborative Law is the practice of law using a cooperative problem-solving model for resolving conflict rather than an adversarial model. It is based upon principles of proactive participation, in which parties first seek to understand and then seek to be understood.

Proactive Participation. Parties are responsible for the legal action and its outcome. Parties work with their attorneys to understand the legal consequences, both for themselves and for the other party.

Interest-based Understanding. The Collaborative Model promotes understanding of the other party's interests and concerns in the legal process, in contrast to the adversarial model in which one party tries to impose his or her position on the other party. Understanding elicits trust and mitigates hostility. Furthermore, when each side fully acknowledges what is important to the other, creative solutions emerge. Parties find common ground rather than differences.

Cooperative Resolution. The parties and their attorneys are committed to a cooperative resolution to ensure an enduring agreement. Both sides strive for a resolution they can accept and support.

Team Effort. Central to the Collaborative process is the idea that the parties and their attorneys work as a "team." The "team" may also include neutral experts for any issue that requires specific expertise. The attorneys model for their clients an attitude of cooperation and respect that allows the parties, their attorneys, and any neutral experts to share their knowledge, skills and resources, toward a common goal.

GUIDELINES FOR THE PRACTICE OF COLLABORATIVE LAW

ATTORNEYS. The Collaborative Law process requires attorneys to practice in a way that permits the "team" to reach a cooperative resolution. This method of practice includes the following skills and behaviors:

- The attorneys advise their respective clients of the law that applies to the parties' circumstances.
- The attorneys model for their clients a commitment to honesty, dignified behavior, and mutual respect.
- The attorneys guide their clients through a process of "cooperative conflict" where disagreement between the parties is used for the productive purpose of finding creative solutions to reach a cooperative settlement.
- The attorneys model for their clients the ability to hear and understand (active listening) what is important to the other party so that the interests of both parties are promoted. The attorneys represent their client's interests while validating the other party's interests.

- The attorneys bring stability and reason to emotionally charged situations, and are agents of reality for unreasonable clients. The attorneys use clear, neutral language in speaking and writing.
- The attorneys cooperate with each other to provide all necessary disclosure and discovery.
- The attorneys cooperate in setting reasonable deadlines for the completion of assignments and tasks.
- The attorneys remain committed to settlement despite impasse and refrain from using adversarial techniques or tactics, e.g., "We'll see you in Court." Court involvement is not an option for resolution.
- The attorneys are committed to finding effective ways to assist parties in reaching agreement and overcoming impasses. E.g. mediation, neutral experts, early neutral evaluation, etc.
- Neither attorney prepares or files any documents with the Court except with the mutual agreement of all concerned.

Parties. The parties are required to sign a Collaborative Law Participation Agreement, which commits the parties to the following:

- The parties participate in good faith to reach a negotiated agreement that addresses both party's interests and concerns.
- Each party makes a full and fair disclosure to his or her attorney and the other party of all facts pertinent to their legal matter.
- A party does not ask or expect his/her attorney to advance an unethical or illegal position.
- The parties communicate respectfully and constructively with each other to settle their legal issues promptly and economically. The parties do not engage in unnecessary discussions of past events.
- The parties will not discuss their settlement issues outside of the conference setting unless they both agree and are comfortable doing so. The parties will not discuss their settlement issues in the presence of the parties' children, at unannounced times by telephone calls or appearance at one or the other's residence or place of employment.