

COLLABORATIVE FAMILY LAW:

WHAT IS IT ABOUT AND SHOULD I ADD IT TO MY PRACTICE TOOL KIT

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WHY LITIGATION ALONE ISN'T ENOUGH

- Escalates conflict and emotional reactivity
- Often increases financial cost and time
- Can damage long-term co-parenting relationships
- Puts attorneys in constant crisis-management mode
- Many clients are asking for a different option

WHAT IS COLLABORATIVE DIVORCE?

- A voluntary, non-adversarial divorce process
- Clients commit to transparency and good-faith negotiation
- Matters are resolved outside of court
- Supported by an interdisciplinary professional team
- Focused on durable, family-centered outcomes
- Clients sign a participation agreement and develop shared commitment

WHY ATTORNEYS ADD COLLABORATIVE DIVORCE

- Expands your professional toolbox
- Meets growing client demand for non-litigation options
- Reduces burnout and adversarial strain
- Allows attorneys to practice with less urgency and conflict
- Improves client satisfaction and outcomes

THE COLLABORATIVE TEAM MODEL

- Two collaboratively trained attorneys
- Mental health professional (coach)
- Child specialist (when appropriate)
- Neutral financial professional
- Each professional stays within their respective scope of practice while supporting the whole family system and the divorce process.

MENTAL HEALTH PROFESSIONAL (DIVORCE COACH/COMMUNICATION SPECIALIST)

- Supports the adults in the process by:

Establishing clients goals and interests for their family

Understanding the strengths and weaknesses of the couple, benefiting the couple and the professional team

Managing emotional reactivity

Improving communication

Reducing impasse and escalation

Keeping the process future-focused

Assisting the professionals to maintain a stance of curiosity, decreasing positioning

Preventing derailment and saves attorney time

CHILD SPECIALIST

- Gives children a voice without putting them in the middle:

Brings child-development expertise

Helps parents understand children's needs

Reduces loyalty conflicts and parentification

Supports child-centered parenting plans

FINANCIAL NEUTRAL

- Provides clarity and education by:

Gathering and organizing financial data

Creating neutral projections and scenarios

Explaining short- and long-term financial impact

Reducing mistrust around money

Assisting the non-money manager to better understand the finances, providing additional stabilization and trust in the process. Thus, promoting a less acrimonious relationship post MSA

Creating increased efficiency

HOW NEUTRALS HELP ATTORNEYS

- Contain emotional volatility so lawyers can focus on law
- Prevent positional bargaining
- Reduce misinformation and financial confusion
- Decrease the likelihood of impasse
- Support durable, enforceable agreements
- Neutrals make attorneys more effective, not less.

COLLABORATIVE ADVOCACY IS STILL ADVOCACY

- Attorneys remain zealous advocates
- Clients are fully informed of rights and options
- Decisions are made intentionally—not reactively
- The team supports informed consent

BENEFITS FOR YOUR CLIENTS

- Greater control and voice
- Lower conflict and stress
- Better co-parenting outcomes
- Privacy and dignity
- Tailored, lasting agreements within a reasonable time frame directed by the clients

WHEN COLLABORATIVE DIVORCE IS A GOOD FIT

- Clients want to avoid court
- Desire to protect children
- Willingness to be transparent
- Complex emotional or financial dynamics
- Long-term family relationships matter
- Need for confidentiality is required

COMMON MISCONCEPTIONS AND TRUTHS

- It's not real lawyering
- Clients give up leverage
- It only works for amicable couples
- It is ethical, informed advocacy
- They gain control
- It manages high conflict effectively

HOW TO ADD COLLABORATIVE DIVORCE TO YOUR PRACTICE

- Complete collaborative law training
- Join local collaborative practice groups
- Start offering it as a process option
- Co-counsel with experienced collaborative attorneys
- Build relationships with neutrals

KEY TAKEAWAYS

- Litigation is not the only ethical option
- Collaborative divorce supports better outcomes
- Neutrals make attorneys more effective
- A team-based approach serves families, and lawyers better

QUESTIONS & DISCUSSION

We welcome your questions and thank you for your commitment to thoughtful family law practice.

COLLABORATIVE DIVORCE AS A SUSTAINABLE REVENUE STREAM

- Paid professional time outside of crisis litigation
- Predictable, structured meetings
- Fewer emergency motions and fire drills
- Revenue aligned with resolution—not escalation
- Clients who are willing to invest in quality process

HOW COLLABORATIVE DIVORCE BENEFITS ATTORNEYS FINANCIALLY

- Efficient use of billable hours
- Reduced write-offs from client distress or dissatisfaction
- Strong referral networks with other professionals
- Repeat referrals from satisfied clients
- Long-term professional sustainability

PRACTICE GROWTH & MARKET DIFFERENTIATION

- Distinguishes your practice in a crowded market
- Appeals to higher-functioning, solution-oriented clients
- Positions you as a problem-solving attorney
- Expands referral sources beyond traditional channels
- Supports reputation-building within the legal community

WHY CLIENTS ARE WILLING TO PAY FOR COLLABORATIVE DIVORCE

- Predictability and transparency
- Reduced emotional and financial damage
- Team-based professional support
- A sense of control and dignity
- Better long-term outcomes
- Supports clients with complex issues

COLLABORATIVE FAMILY LAW PROCESS AGREEMENT

I. GOAL

- A. We acknowledge that the essence of “Collaborative Law” is the shared belief by participants that it is in the best interests of parties and their families in Family Law Matters to commit themselves to avoiding litigation.
- B. We adopt the Collaborative Law conflict resolution process, which involves negotiation in an atmosphere of honesty, cooperation, integrity and professionalism, geared toward ensuring the future well-being of the participants, rather than relying on a court-imposed resolution.
- C. Our goal is to eliminate the negative economic, social, and emotional consequences to the participants and their families of protracted litigation.
- D. We commit ourselves to the Collaborative Law Process and agree to use this process to resolve our differences fairly and equitably.

II. PROCESS

- A. We will make every reasonable effort to settle our case without court intervention.
- B. We agree to give full, prompt, honest and open disclosure of all information pertinent to our case, whether requested or not, and to exchange Rule 401 Financial Statements in a timely manner.
- C. We agree to engage in informal discussions, conferences, and negotiations with the goal of settling all issues.
- D. We agree to direct all attorneys, therapists, appraisers, as well as experts and other consultants retained by us, to work in a cooperative effort to resolve issues, without resort to litigation or any other external decision-making process, except as agreed upon.

III. PRESERVATION OF STATUS QUO

- A. We agree that commencing immediately, neither party will borrow against, cancel, transfer, dispose of, or change the beneficiaries of any pension, retirement plan or insurance policy or permit any existing coverage to lapse, including life, health, automobile and/or disability held for the benefit of either party or the child(ren) without the prior written consent of the other party.
- B. We agree that commencing immediately, neither party will change any provisions of any existing trust or will or execute a new trust or will without the prior written consent of the other party.
- C. We agree that commencing immediately, neither party will sell, transfer, encumber, conceal, assign, remove or in any way dispose of any property, real or personal, belonging to or acquired by either party, without the prior written consent of the other party, except in the usual course of business or investing, payment of reasonable attorney’s fees and costs in connection with this negotiation or for the necessities of life.
- D. We agree that neither party will incur any further debts that would burden the credit of the other, including but not limited to further borrowing against any credit line secured by the marital

residence, or unreasonably using credit cards or cash advances against credit or bank cards or incurring any liabilities for which the other may be responsible, other than in the ordinary course of business or for the necessities of life without the prior written consent of the other.

IV. CAUTIONS

- A. We understand there is no guarantee that the process will be successful in resolving our case.
- B. We understand that the process cannot eliminate concerns about the irreconcilable differences that have led to the current conflict.
- C. 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.
- D. We recognize that, while the attorneys share a commitment to the process described in this Agreement, (a) 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; (b) each of us must rely solely on the advice of our own lawyers and not the other party's lawyer; (c) each of the lawyers may have confidential and privileged communications with his/her client; and (d) such communications are not inconsistent with the collaborative process.
- E. We understand that there are advantages as well as disadvantages to the Collaborative Law Process. Among the disadvantages are that (a) if the process breaks down and litigation ensues, the parties will likely incur additional expense because of the need to hire new counsel; (b) by agreeing not to go to court, the parties cannot use formal discovery procedures and therefore must trust in each other's good faith about exchanging relevant documents and information; and (c) without the ability to use the authority of the court to prevent the transfer or dissipation of marital assets, the parties must trust in each other's honesty with regard to those assets.

V. ATTORNEY'S FEES AND COSTS

We agree that our attorneys are entitled to be paid for their services, and an initial task in a collaborative matter is to ensure payment to each of them. We agree to make funds available for this purpose.

VI. PARTICIPATION WITH INTEGRITY

- A. We will work to protect the privacy and dignity of all involved, including parties, children, attorneys and consultants.
- B. We shall maintain a high standard of integrity and, specifically, shall not take advantage of each other or of the miscalculations or inadvertent mistakes of others, but shall acknowledge and correct them.

VII. EXPERTS AND CONSULTANTS

If experts are needed to assist in the negotiation of disputed issues (such as the value of an asset, tax questions, or parenting issues), the parties will retain them jointly, ensure their payment, and share their work product.

VIII. CHILDREN'S ISSUES

- A. In resolving issues about sharing the enjoyment of and the responsibility for the children, the parties, attorneys, therapists and others shall make every effort to craft solutions that promote the children's best interests and that promote a caring, loving and involved relationship among the children and both parents.
- B. We agree to act quickly to resolve differences related to the children.
- C. We agree not to seek a custody evaluation while the matter is a Collaborative Law case, except by mutual agreement. However, this does not preclude the use of a parenting coordinator, mediator, or similar consultant to recommend parenting arrangements for the children.
- D. The parties acknowledge that inappropriate communications regarding their divorce can be harmful to their child/children. They agree that settlement issues will not be discussed in the presence of their child/children, or that communication with the child/children regarding these issues will occur only if it is appropriate and done by mutual agreement, or with the advice of a child specialist. The parties agree not to make any changes to the residence of the child/children without first obtaining the written agreement of the party.

IX. NEGOTIATION IN GOOD FAITH

- A. The parties acknowledge that each of our attorneys is independent from the other and represents only one party in the Collaborative Law process.
- B. We understand that the process, even with full and honest disclosure of all information pertinent to the resolution of our case, will involve vigorous good-faith negotiation.
- C. We will take a reasoned position on all disputes. We will use our best efforts to create proposals that meet the fundamental needs of both of the parties. We recognize that compromise may be needed in order to reach a settlement of all issues.
- D. Although we may discuss the likely outcome of a litigated result, none of us will use the threat of litigation as a way of forcing settlement.

X. CONFIDENTIALITY

- A. The Parties agree that the entire Collaborative Law process, including all written submissions and communications, is confidential and without prejudice, and shall be treated as a compromise negotiation for the purposes of the rules of evidence and other relevant provisions of state and federal law. The Parties and Counsel will not disclose any information including offers, promises, conduct, statements or settlement terms whether oral or written, made by any of the Parties, their attorneys or any experts in connection with the Collaborative Law process, except where disclosure is required by law or court rule, and all such information shall be inadmissible at trial, provided however that no such information which is independently obtained and admissible shall be rendered confidential or inadmissible because it is referred to in the Collaborative Law process. The Parties and their counsel may, however, disclose to appropriate authority's information obtained in the course of the Collaborative Law process concerning (a) child abuse or neglect, (b) the risk of serious harm to an individual, or (c) the planned commission of a crime. The confidentiality provided for in this section of the Agreement also shall not apply to evidence relating to the liability of the attorneys in a subsequent suit against them or disciplinary proceedings against them; information

which all parties to the Collaborative Law process agree in writing, after the conclusion of the case, may be disclosed; and information about payment and payment arrangements for the Collaborative Law engagement.

- B. The Parties may disclose information about the negotiation to their respective family members, financial advisors or counselors, provided however that all such individuals shall be informed by the Party providing them with the information that it is confidential and governed by the terms of this Agreement. The Parties agree that a description of the case may be used for research, education, or training (or any combination of these), but only if information which might identify the family has been removed.
- C. If subsequent litigation occurs, the parties mutually agree that (a) neither party will introduce as evidence in Court information disclosed during the Collaborative Law Process, offers or proposals for settlement, or other statements by any of the parties to the Process or their attorneys, except documents that are otherwise discoverable; (b) neither party will offer as evidence the testimony of either collaborative attorney, nor will they subpoena either of the lawyers to testify, in connection with this matter; and (c) 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.
- D. The confidentiality obligations set forth in this Agreement shall remain in effect even after the completion of the Collaborative Law process, regardless of whether the case is resolved by settlement or not.

XI. VOLUNTARY TERMINATION OF COLLABORATIVE PROCESS

- A. Either party may unilaterally and without cause terminate the Collaborative Law Process by giving written notice of such election to his or her attorney and the other party.
- B. Either attorney may withdraw unilaterally from the Collaborative Law Process by giving fifteen (15) days written notice to his or her client and the other attorney. Notice of withdrawal of an attorney does not terminate the Collaborative Law Process; to continue the process, the party losing his or her attorney will retain a new attorney who will agree in writing to be bound by this Agreement.
- C. Upon termination of the Collaborative Law Process or withdraw of either counsel, the withdrawing attorney will promptly cooperate to facilitate the transfer of the client's file and any information needed for continued representation of the client to successor counsel.

XII. ABUSE OF THE COLLABORATIVE PROCESS

- A. We enter the Collaborative Law Process with the expectation of honesty and full disclosure in all dealings by all individuals involved in the Collaborative Law Process.
- B. We understand that a Collaborative Law attorney will withdraw from his/her representation of his/her client as soon as possible upon learning that his/her client has breached this Agreement or acted so as to undermine or take unfair advantage of the Collaborative Law Process. Such abuse of the process would include the intentional withholding or misrepresentation of information, the secret disposition of marital property, the failure to disclose the existence or the nature of assets/income and/or obligations, or otherwise acting to undermine or take unfair advantage of the Collaborative Law Process.

XIII. DISQUALIFICATION BY COURT INTERVENTION

- A. We understand that our attorney’s representation is limited to the Collaborative Law Process. Except as provided for below, neither of our attorneys, nor other attorneys from the same firm, can ever represent us in court in a proceeding against the other spouse.
- B. In the event this Collaborative Law Process is unsuccessful and a complaint for divorce is filed, both attorneys will be disqualified from representing either client with respect to such complaint for divorce. However, if the Collaborative Law Process is successful and we sign a Separation Agreement, then both attorneys may file a joint petition for an uncontested, no-fault divorce on our behalf as well as the court papers related thereto and may represent us as counsel of record at the final uncontested hearing on our divorce.
- C. Any resort to litigation prior to settlement shall result in the automatic termination of the Collaborative Law Process on the date that either party or his/her attorney unilaterally seeks court intervention, provided however that the provisions of this Agreement relating to confidentiality and disqualification/withdrawal of counsel shall remain in effect.
- D. In the event that the Collaborative Law Process terminates, all consultants and experts will be disqualified as witnesses, and their work product will be inadmissible as evidence, unless the parties agree otherwise in writing.

XIV. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

XV. PLEDGE

BOTH PARTIES AND THEIR ATTORNEYS HEREBY PLEDGE TO COMPLY WITH AND TO PROMOTE THE SPIRIT AND LETTER OF THIS AGREEMENT, UNLESS MODIFIED BY WRITTEN AGREEMENT SIGNED BY BOTH PARTIES AND THEIR ATTORNEYS.

, Husband

, Wife

Date

Date

, Esquire, Husband’s Attorney

, Esquire, Wife’s Attorney

Date

Date

IA CIP INTERNATIONAL ACADEMY OF
CALIBRATION PROFESSIONALS

STANDARDS AND ETHICS

International Academy of Collaborative Professionals
STANDARDS AND ETHICS

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Preface

IACP's mission is to transform how conflict is resolved worldwide through Collaborative Practice. Collaborative Practice involves a fundamentally different approach than traditional methods of conflict resolution, resulting in the need for unique Standards and Ethics.

IACP has adopted these Standards and Ethics to promote the essential elements of Collaborative Practice and to establish core principles and requirements designed to advance:

- consistency of practice
- a common set of expectations for professionals and clients
- a high level of integrity for the benefit of clients

The Standards and Ethics consists of these parts:

1. *Definition of Collaborative Practice* identifies the fundamentals of the process.
2. *Minimum Ethical Standards for Collaborative Professionals* provides guidance to professionals regarding competence, confidentiality, advocacy, and professional roles with respect to questions and situations not addressed by other traditional rules of professional conduct.
3. *Minimum Standards for Collaborative Practitioners* delineates essential training, licensure, and experience for professionals.
4. *Minimum Standards for Introductory Collaborative Practice Trainings and Introductory Interdisciplinary Collaborative Practice Trainings* provides the elements that introductory Collaborative trainings must include.
5. *Minimum Standards for Collaborative Trainers* specifies minimum qualifications that trainers should have in order to provide an effective training.

IACP Standards and Ethics are designed to establish minimum expectations for professionals, and to support the goal of ensuring that Collaborative Practice retains quality, consistency, and integrity.

IACP is not a regulatory body. IACP Standards and Ethics do not form a basis for determining whether a practitioner is subject to legal liability or disciplinary action.

IACP Definition of Collaborative Practice¹

Collaborative Practice is a voluntary dispute resolution process in which clients resolve disputes without resort to any process in which a third party makes a decision that legally binds a client. In Collaborative Practice:

1. The clients sign a Participation Agreement describing the nature and scope of the matter that is consistent with the IACP Ethical Standards;
2. The clients voluntarily disclose all information which is relevant and material to the matters to be resolved;
3. The clients agree to use good faith efforts in their negotiations to reach a mutually acceptable resolution;
4. Each client must be represented by a Collaborative Lawyer whose representation terminates upon the undertaking of any Proceeding as defined in the IACP Ethical Standards;
5. The clients may engage mental health and financial professionals whose engagement terminates upon the undertaking of any Proceeding; and
6. The clients may jointly engage other experts as needed.

¹Initially adopted by the IACP Board of Directors on October 13, 2011 and amended on June 21, 2017.

IACP Minimum Ethical Standards for Collaborative Professionals²

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²Initially adopted in 2004, the Ethical Standards were revised in 2008 and restated in June 2017.

Introduction Collaborative Practice is a distinct dispute resolution model that challenges professionals in ways that may not be addressed by the ethical standards of individual disciplines or other dispute resolution models. The Standards that follow:

1. Create a basic framework for ethical and professional conduct by the Collaborative Professional that is consistent with each professional's ethical responsibilities;
2. Provide a common set of values, principles, and standards to guide the decisions, conduct, and teamwork of the Collaborative Professional; and
3. Identify responsibilities of Collaborative Professionals to their clients, Collaborative colleagues, and the public.

I. GENERAL STANDARDS APPLICABLE TO ALL COLLABORATIVE PROFESSIONALS

1.0 Terminology. As used in these Standards:

A. "Collaborative Practice" or the "Collaborative Process" has the meaning set forth in the IACP's Definition of Collaborative Practice, which is:

Collaborative Practice is a voluntary dispute resolution process in which clients resolve disputes without resort to any process in which a third party makes a decision that legally binds a client. In Collaborative Practice:

1. *The clients sign a Participation Agreement describing the nature and scope of the matter that is consistent with the IACP Ethical Standards;*
2. *The clients voluntarily disclose all information which is relevant and material to the matters to be resolved;*
3. *The clients agree to use good faith efforts in their negotiations to reach a mutually acceptable resolution;*
4. *Each client must be represented by a Collaborative Lawyer whose representation terminates upon the undertaking of any Proceeding as defined in the IACP Ethical Standards;*
5. *The clients may engage mental health and financial professionals whose engagement terminates upon the undertaking of any Proceeding; and*
6. *The clients may jointly engage other experts as needed.*

B. "Collaborative Professional" means a professional who has acknowledged participation in the Collaborative Process as provided in Standard 2.1. For consistency, this terminology is used to generally describe certain roles of Collaborative Professionals:

1. "Coach" refers to a mental health professional whose function relates primarily to the emotional dynamics and communications between the client(s).
2. "Child Specialist" refers to a mental health professional whose function relates primarily to the children or other dependent(s) of the client(s).

3. "Financial Specialist" refers to a financial professional whose function relates primarily to the financial concerns of the client(s).
4. "Collaborative Lawyer" refers to a legal professional whose function relates primarily to the legal concerns of the client(s).

Comment: *These definitions are provided solely to clarify the terminology used in these Standards. Collaborative Practice groups around the world use a variety of names to describe the professionals who perform these functions. These are not the only professional roles that may exist in a Collaborative matter. These Standards do not require the use of any particular titles or professional team configuration. These Standards do not modify the IACP Minimum Standards for Collaborative Practitioners.*

- C. "**Conclusion**" means either a "Resolution" or "Termination" as defined below.
- D. "**Material Information**" means information that is reasonably required for the client(s) to make an informed decision with respect to the Resolution of the matter.
- E. "**Participation Agreement**" means a writing signed by the clients that complies with Standard 2.6.
- F. "**Proceeding**" means any process in which a third party makes a decision that legally binds a client, including a court, administrative proceeding, arbitration, and any other tribunal. A Proceeding may be contested or uncontested.
- G. "**Resolution**" means a written agreement signed by the clients addressing the issues in the dispute, and if required to be implemented or made enforceable, the agreement has been approved or ratified by a court or other authority. "Resolution" includes an agreement addressing some but not all of the issues if the clients have agreed that the remaining issues will not be resolved in the Collaborative Process.
- H. "**Termination**" means a terminating event defined in Standard 4.2 has occurred.

1.1 Resolution of Conflicts between IACP Ethical Standards and Requirements Regulating Professionals. The resolution of any conflict between these Standards and the ethical or professional responsibility requirements regulating the professional will be controlled by the ethical or professional responsibility requirements regulating the professional.

1.2 Competence.

- A. Collaborative Professionals must comply with professional conduct requirements applicable to their professions.
- B. Collaborative Professionals must be in good standing under the licensure or certification required by their professions.
- C. Collaborative Professionals must at all times meet all requirements of the IACP Minimum Standards for Collaborative Practitioners.
- D. Collaborative Professionals will respect the expertise, skill and experience of other members of the professional team. Collaborative Professionals will not provide services for which they are not qualified by education, training or experience. Collaborative Professionals will be mindful of the clients' individual circumstances

and the overall circumstances of the matter that may require others to be on the Collaborative Professional team or be involved as consultants.

Comment: *Collaborative Professionals are confronted by financial, psychological, emotional, cultural, physical, and other factors that affect professional and client participation in the process. It is important for the professional to be able to recognize these factors, as they will necessarily influence the Collaborative Process and client decision making. In fully addressing client needs, interests and goals, the Collaborative Professional must be willing to turn to other professionals, such as lawyers with special expertise, mental health professionals, medical professionals, financial professionals, vocational specialists, specialists in the areas of physical disability, substance abuse, domestic violence, and others. In working with other specialists, Collaborative Professionals and clients should fully understand how transparency, confidentiality and privilege will apply to those specialists.*

1.3. Priority of Client Interest.

A. Collaborative Professionals must always place the interest of their clients above their own personal, financial or professional interests. Where the interests of a professional and any client(s) are or could be in conflict, that Collaborative Professional must either (1) decline to accept the matter, or (2) resign if the conflict cannot be disclosed, is not waived, or is not waivable.

B. Conflicts between the interests of a client and a professional include any circumstance where there is a risk that the professional's responsibilities under these Standards will be materially affected by a personal, financial, or professional relationship with the client(s), a current or former client, a professional working on the matter, or a third person.

C. Prior to seeking waiver of a conflict between the interests of the client and the professional, the professional must candidly advise the client(s) of the benefits and risks of the professional's involvement including how the conflict could impair the professional's objectivity, competence or effectiveness.

D. A Collaborative Professional will not accept a sum of money or a gift of more than minimal value for the referral of the professional's Collaborative client(s).

1.4. Confidentiality and Privilege.

A. Confidentiality—General Rule. A Collaborative Professional will not disclose information about the client(s) that was learned during the Collaborative Process, unless: (1) all affected clients consent, (2) the disclosure is mandated by law (including court or administrative order), (3) the professional has a reasonable belief that a client may harm persons or property, or (4) related to a dispute or complaint concerning the professional's work or fees during the Collaborative Process.

Comment: *The obligations of Collaborative Professionals to maintain confidentiality is accompanied by the obligation of clients and Collaborative Professionals to provide full disclosure of Material Information in the Collaborative Process. Accordingly, professionals must obtain consent from their clients to comply with Standards 3.1, 3.3 and 3.4.*

B. Confidentiality Before the Participation Agreement Is Signed. Before the Participation Agreement is signed, a Collaborative Professional will

not disclose a client's private information and confidences, except to the extent allowed by that professional's ethics and professional responsibility requirements, or with the informed consent of the client.

Comment: *Information shared between clients, or between prospective Collaborative Professionals, prior to the commencement of the Collaborative Process may not be protected by the evidentiary privilege for Collaborative communications where it exists.*

C. Protecting Privilege and Confidentiality. In jurisdictions with an evidentiary privilege for Collaborative communications, a Collaborative Professional will do all things necessary to ensure the privilege applies to the Collaborative Process. If no such privilege exists in the jurisdiction, a Collaborative Professional will include all provisions necessary in the Participation Agreement or other contract to maximize the probability that communications within the process will remain confidential and inadmissible in a Proceeding.

1.5 Promoting Collaborative Practice. A Collaborative Professional must be truthful, candid and forthright when promoting Collaborative Practice to potential clients.

II. COMMENCING THE COLLABORATIVE PROCESS

2.1 Commencement of the Collaborative Process. The Collaborative Process commences when the Participation Agreement is signed by the clients, and their Collaborative Lawyers have acknowledged in writing their representation in the Collaborative Process.

2.2 Required Process Disclosures.

A. A Collaborative Lawyer must inform the prospective client(s) of the full range of process options available for addressing any legal matter(s), and provide information reasonably necessary to enable the client to make an informed process choice.

Comment: *This Standard parallels the Uniform Collaborative Law Act/Rules by imposing requirements on the Collaborative Lawyer to provide clients information about the potential risks and benefits of each available process option. This information includes the possible relative financial costs and the impact on ongoing and future relationships. This Standard does not limit any Collaborative Professional from offering information about process options or an opinion about the appropriate process for the client's matter.*

B. Prior to commencing the Collaborative Process, a Collaborative Professional must take reasonable steps to ensure that the client understands that the Collaborative Process (1) is voluntary, (2) can be terminated at any time, and (3) is subject to the requirements of Ethical Standards 3.1, 3.2, 3.3, 3.4, 3.12, and 3.13.

Comment: *Because the exercise of the professional's responsibilities in the Collaborative Process may be different from the clients' expectations, informed consent is extremely important. The professional must take reasonable steps to give the client a meaningful understanding about the process and expectations of the professional. Such steps will differ depending on the individual client, and could require dialogue and confirming writings. See Standards 2.5 and 2.6.*

2.3 Effective Participation in Process. A Collaborative Professional must suspend the Collaborative Process or resign if the professional has a reasonable belief that a client is unable to effectively participate in the process.

2.4 Consideration of Likelihood of Reaching Resolution. Before a Participation Agreement is signed, and throughout the Collaborative Process, a Collaborative Professional must assess the likelihood that a Resolution can be reached in a manner consistent with these Standards and within a timeframe appropriate to the matter and to the client(s) circumstances. If a professional has a significant concern whether Resolution can so be reached, the professional must take action appropriate to the concern.

Comment: *In making the assessment, a Collaborative Professional must consider whether the Collaborative Process can effectively address the clients' specific circumstances, needs and concerns. If action is warranted, actions may include conferring with the client(s) about the professional's concerns, conferring with the professional team, modifying the approaches and techniques used in the process, providing additional support for the client(s), helping the client(s) select professionals or a process more suitable for the circumstances, or declining or resigning from the matter.*

2.5 Fee Agreement or Confirming Writing. A Collaborative Professional will provide the client(s) a written fee agreement (or other writing) that describes the scope and limitations of that Collaborative Professional's services to the client(s) in the Collaborative Process, the circumstances under which the professional may resign or terminate the process, and the professional's fee structure and billing practices.

2.6 Required Participation Agreement. Collaborative Practice requires a written Participation Agreement that:

- A. Is consistent with these Standards;
- B. Binds the clients and all Collaborative Professionals to the Collaborative Process; and
- C. Includes these elements at a minimum:
 - 1. The prohibition described in Standard 3.12.
 - 2. The requirement to disclose information as described in Standard 3.1.
 - 3. The requirement to negotiate in good faith as described in Standard 3.3.
 - 4. The conditions under which a professional may resign or terminate the Collaborative Process as described in Standard 3.10.
 - 5. The conditions under which the Collaborative Process terminates as described in Standard 4.2.

Comment: *Both the client(s) and the Collaborative Professionals must be bound in writing to the Collaborative Process. It is not required that all be bound in the same document.*

III. THE COLLABORATIVE PROCESS

3.1 Disclosure of Information.

- A. The Collaborative Process requires the full and affirmative disclosure of all

Material Information whether or not requested.

- B. The Collaborative Process requires clients and professionals to comply with all reasonable requests for information.

3.2 Advocacy in the Collaborative Process.

- A. A Collaborative Professional will respect each client's self-determination, recognizing that ultimately the clients are responsible for making the decisions that resolve their issues.
- B. A Collaborative Professional will assist the client(s) in establishing realistic expectations in the Collaborative Process.
- C. When the matter relates to the care and support of children, elders or other dependents, a Collaborative Professional will encourage the client(s) to consider the impact of decisions on the dependents.
- D. A Collaborative Professional will consider the impact that the professional's experiences, values, opinions, beliefs, and behaviors will have on the Collaborative matter.
- E. A Collaborative Professional will avoid contributing to interpersonal conflict of the clients, including when identifying and discussing the clients' interests, issues, and concerns.

3.3 Good Faith Negotiation.

- A. The professionals must act in good faith in all negotiations and in the Collaborative Process, and must advise the clients that the Collaborative Process requires good faith negotiation.
- B. Good faith negotiation requires that:
 1. Each client and professional takes a thoughtful and constructive approach on all unresolved questions in the interest of reaching agreements.
 2. Each client and professional complies with the Participation Agreement and any other formal and informal agreements made in the Collaborative Process.
 3. No client or professional takes advantage of inconsistencies, misunderstandings, miscalculations, omissions, or inaccurate assertions of fact, law or expert opinion.
 4. No client or professional threatens to undertake a Proceeding to coerce a particular outcome on an issue to be resolved by the Collaborative Process.

Comment: *Collaborative Professionals must make diligent efforts to understand from the clients' perspectives what is most important to them. Collaborative Professionals must be mindful to respect the dignity of all involved and maintain a high standard of integrity in negotiations. Collaborative Professionals are not responsible for the behavior of clients, but must take reasonable steps to educate clients about the requirements of good faith negotiations. These interests, values, and priorities may go beyond traditional legal or other professional considerations. Clients who select the Collaborative Process have a reasonable expectation that their matter can and will be resolved by an agreement that is acceptable to all the clients. If the clients reach impasse, the professionals will encourage the clients to reconsider or create options that would be acceptable to all. This does not preclude a professional suggesting that a client*

considers seeking other opinions or terminating the Collaborative Process.

3.4 Professional Teamwork. Each Collaborative Professional engaged in a matter has the responsibility, individually and with the other Collaborative Professionals, to manage the Collaborative Process effectively, efficiently, and in a manner that advances the clients' common goal of reaching Resolution. This responsibility includes:

- A. The obligation to inform the other professionals of facts or circumstances that are likely to impair or improve (1) the effective functioning of the Collaborative Process for the clients, (2) the likelihood of reaching Resolution, and (3) the ability of the professionals to work effectively together.
- B. The obligation to monitor and coordinate the efforts of professional team members to avoid unnecessary delay and duplication of effort.
- C. The obligation to examine the impact of the professional's own conduct upon the functioning of the professional team and on the Collaborative Process. Each Collaborative Professional must act in a manner that advances the interest of all clients in reaching Resolution.

Comment: *When a Collaborative Professional fails to communicate effectively, that failure can impact the productivity and efficiency of the Collaborative Process. Similarly, an interpersonal dispute or stylistic difference between professionals, or between a professional and one of the clients, may negatively impact the ability of the professional team to effectively manage the process.*

3.5 Neutral Roles.

- A. A Collaborative Professional who serves on a Collaborative matter in a neutral role must adhere to that role, and may not engage in any relationship that would compromise the Collaborative Professional's neutrality. Except as otherwise specified in Standard 4.4, working with any client(s) or their dependent(s) outside of the Collaborative Process is inconsistent with a neutral role.
- B. A neutral Collaborative Professional will give reasonable advance notice to the other professionals engaged in the matter prior to meeting with fewer than all the clients.

3.6 Financial Specialists. A Financial Specialist will not have any other business or professional relationship with a Collaborative client during or after the conclusion of a Collaborative matter, and will not sell or recommend the purchase of financial products or other services to a client in a matter which results in a financial benefit to the Financial Specialist.

3.7 Mental Health Professionals.

- A. A person who has acted in a counseling capacity for a client or clients will not serve in the role of Coach or Child Specialist on a Collaborative matter involving that client or the client's dependent.
- B. A Collaborative Professional serving as a Child Specialist will inform the dependent about the Child Specialist's role and the limits of confidentiality as appropriate, taking into account the dependent's age and level of maturity.

3.8 Circumstances that Require Counseling Clients. If a Collaborative Professional learns that a client is acting in a manner that (1) is inconsistent with any provision of the Participation Agreement, (2) impedes the efficient and effective conduct of the Collaborative Process, (3) uses the Collaborative Process to achieve an unfair advantage, or (4) otherwise undermines the integrity of the Collaborative Process, the professional will advise and counsel the client about the potential consequences of continuing the conduct including the risk that continuation of the conduct could lead to mandatory professional resignation and/or Termination of the process.

3.9 Resignation and Discharge.

- A. The resignation or discharge of a Collaborative Lawyer does not terminate the Collaborative Process if, within the time specified by law or by the Participation Agreement, the client engages a successor Collaborative Lawyer.
- B. The resignation or discharge of a Collaborative Professional other than a Collaborative Lawyer does not terminate the Collaborative Process if (1) the client(s) engages a successor Collaborative Professional, or (2) the clients and all continuing Collaborative Professionals consent to proceed without a successor professional.
- C. Any successor Collaborative Professional must agree in writing to be bound by the Participation Agreement.

Comment: *The Collaborative Process must terminate if a client does not hire a successor Collaborative Lawyer within the time specified. See Standard 4.2.C. There is no requirement that a resigning Collaborative Professional give a reason.*

3.10 Circumstances that Require Resignation. A Collaborative Professional must resign under the following circumstances, provided that the professional has fulfilled the obligation to counsel and advise a client as set forth in Standard 3.8:

- A. The professional's client(s) intentionally misrepresents, withholds or fails to disclose Material Information, whether or not such information has been requested.
- B. The professional's client(s) takes unfair advantage of inconsistencies, misunderstandings, inaccurate assertions of fact, law or expert opinion, miscalculations, or omissions.
- C. The professional has a conflict of interest that is not disclosed or is disclosed but not waived.
- D. In any situation where, under the Participation Agreement or these Standards, the withdrawal of the professional is mandatory.

Comment: *There may be circumstances when a professional has reached the conclusion that he or she cannot in good conscience continue to be effective in the process, or that the integrity of the process has been materially impaired in a manner that is not described above. In those circumstances, a professional may elect to resign under Standard 3.9.*

3.11 Notice of Resignation. If a Collaborative Professional resigns, that professional will provide prompt written notification of the resignation to

that professional's client(s), the other Collaborative Professionals and, if permitted, to all clients.

3.12 Prohibition Against Participating in a Proceeding—General Rule.

- A. Except as provided in Standards 3.12.C and 3.13, a Collaborative Professional and any other professional working in the same firm or in association with the Collaborative Professional is prohibited from participating in or providing services with respect to any Proceeding that involves substantially the same participants.

Comment: *Standard 3.12.A does not prohibit a Collaborative Professional from providing services that are not related to a Proceeding if allowed by Standard 4.4.*

- B. The prohibition in Standard 3.12.A may not be waived by the clients.
- C. The application of the prohibition to a professional working in the same firm or in association with the Collaborative Professional does not apply if the Participation Agreement expressly exempts a professional who (1) is a member of an organization or firm providing services to the client without fee, or a government agency, and (2) has been isolated from any participation in the Collaborative Process.

3.13 Sole Exception to Prohibition Against Participating in a Proceeding.

With the consent of all clients, a Collaborative Professional may initiate and take action in a Proceeding if necessary to implement or make legally enforceable agreements reached in the Collaborative Process, including participating in procedures that are appropriate to preserve the ability of a court or other authority to approve such agreements. This does not prohibit a Collaborative Lawyer from initiating a Proceeding prior to commencement of the Collaborative Process.

Comment: *This exception does not modify the general rule in Standard 3.12.A and B that the clients may not consent to having a third party decide any contested issue without first terminating the Collaborative Process. Examples of permissible acts include initiating a Proceeding to approve a Resolution, or requesting a stay or continuance of a Proceeding to preserve jurisdiction to approve an agreement reached in the Collaborative Process.*

IV. CONCLUSION OF THE COLLABORATIVE PROCESS

4.1 Conclusion. The Collaborative Process ends upon its Conclusion as defined in Standard 1.0.C.

4.2 Terminating Events. The occurrence of any of the following events Terminates the Collaborative Process:

- A. A client or professional gives notice of Termination.
- B. A client or a client's lawyer participates in a Proceeding unless specifically allowed by Standard 3.13.
- C. A Collaborative Professional resigns or is discharged and none of the exceptions of Standard 3.9 apply.

4.3 Notice Requirement in Case of Termination. If a Collaborative Professional

learns of a Terminating event under Standard 4.2, the professional will notify the other Collaborative Professionals.

4.4 Professional Services after Resolution of Process.

A. Child Specialists and Coaches. Child Specialists or Coaches may provide services following the Resolution of a Collaborative matter, so long as the services remain consistent with their role in the Collaborative matter. A Child Specialist or neutral Coach must have the consent of all clients before providing services after Resolution. A Coach or Child Specialist may not serve as an individual or joint therapist to the client(s) or to a client's dependent after Resolution.

B. Financial Specialists. With the consent of all clients, a Financial Specialist may provide services following the Resolution of a Collaborative matter, so long as the services do not violate Standard 3.6 and remain consistent with the Financial Specialist's role in the Collaborative matter.

Comment: *An example includes assisting clients in completing the tasks specifically assigned to the Financial Specialist by the clients' Resolution.*

C. Collaborative Lawyers. A Collaborative Lawyer may provide services for a client following the Resolution of a Collaborative matter, so long as the services do not violate Standard 3.12.

Comment: *A Collaborative matter may resume after a Resolution. Standard 4.4 requires that all Professionals maintain roles that are consistent with their roles in the Collaborative matter following Resolution. Standard 3.12 prohibits a Collaborative Professional from participating in a Proceeding after Resolution, including enforcement of an agreement reached between clients in the Collaborative Process. The restrictions of Standard 3.12 do not apply when subsequent services for a client in a Proceeding involve no other participants from the Collaborative matter.*

4.5 Professional Work after Termination of Process.

A. After Termination, a Collaborative Professional will not provide any service for the client(s) that is either (a) adverse to any other client in the terminated Collaborative matter, or (b) related to the Collaborative matter.

B. After Termination, a Collaborative Professional may provide the professional's client(s) with referrals.

C. After Termination, a Collaborative Professional may consult with a client about reinstating or resuming the Collaborative Process, and other dispute resolution process options that may be available.

Comment: *See also Standard 3.12. This Standard does not prohibit changing the way in which negotiations are conducted within the Collaborative Process prior to Termination. This Standard prohibits assisting clients in any negotiation or Proceeding following Termination.*

IACP Minimum Standards for Collaborative Practitioners³

The IACP Standards for Trainers, Trainings, and Practitioners are drafted with an awareness of the aggregate nature of learning. Knowledge comes from the interface between education and practical experience. Skill is acquired from the successive application of education to experience. With those principles in mind, these Standards should be understood as a point of departure in a continuing journey of education and practice for Collaborative practitioners and trainers.

The IACP sets the following basic requirements for a professional to hold herself/himself out as a practitioner who satisfies IACP Standards for Collaborative Practice in family related disputes.

1. General Requirements:

- 1.1 The Collaborative practitioner is a member in good standing of:
IACP; and a local Collaborative Practice group.
- 1.2 The Collaborative practitioner accepts the IACP Mission Statement.
- 1.3 The Collaborative practitioner diligently strives to practice in a manner consistent with the IACP Ethical Standards for Collaborative practitioners.
- 1.4 The trainings referred to in 2.2, 3.3 and 4.3 must be trainings that meet the IACP Minimum Standards for trainings delivered by trainers who meet the IACP Minimum Standards for Collaborative Trainers.

2. IACP Minimum Standards for Collaborative Lawyer Practitioners:

- 2.1 Membership in good standing in the administrative body regulating and governing lawyers in the lawyer's own jurisdiction.
- 2.2 Completion of an Introductory Collaborative Practice Training or an Introductory Interdisciplinary Collaborative Practice Training that meets the requirements of IACP Minimum Standards for Introductory Collaborative Practice Trainings and Introductory Interdisciplinary Collaborative Practice Trainings. For practitioners who commenced Collaborative Practice prior to January 1, 2015, completion of training that met the requirements of the IACP Minimum Standards for a Collaborative Basic Training then in effect.
- 2.3 At least one thirty hour training in client centered, facilitative conflict resolution, of the kind typically taught in mediation training (interest-based, narrative or transformative mediation programs).
- 2.4 In addition to the above, an accumulation or aggregate of fifteen further hours of training in any of the following areas:
 - Collaborative training beyond minimum fourteen hours of Initial Collaborative training
 - Basic professional coach training
 - Interest-based negotiation training
 - Communication skills training
 - Advanced mediation training

³Minimum Standards for Collaborative Practitioners were initially adopted July, 2004 and revised in October 2014

3. IACP Minimum Standards for Collaborative Mental Health Practitioners:

3.1 Mental Health professional license in good standing in one of the following:

- LCSW [Licensed Clinical Social Worker]
- RSW [Registered Social Worker]
- LMFT [Licensed Marriage and Family Therapist]
- RCC [Registered Clinical Counsellor]
- CCC [Canadian Clinical Counsellor]
- R Psych [Registered Psychologist]
- C Psych [Chartered Psychologist]
- Licensed Psychologist
- LEP [Licensed Educational Psychologist]
- LPC [Licensed Professional Counsellor]

or such other equivalent license in a state, province or country that requires an advanced degree in a recognized clinical mental health field, requires continuing education, and is regulated by a governing body under a code of ethics.

3.2 Background, education and experience in:

- Family systems theory
- Individual and family life cycle and development
- Assessment of individual and family strengths
- Assessment and challenges of family dynamics in separation and divorce
- Challenges of restructuring families after separation
- For child specialists: expertise in child development, clinical experience with a specialty focus on children and an in-depth understanding of children's unique issues in divorce

3.3 Completion of an Introductory Collaborative Practice Training or an Introductory Interdisciplinary Collaborative Practice Training that meets the requirements of IACP Minimum Standards for Introductory Collaborative Practice Trainings and Introductory Interdisciplinary Collaborative Practice Trainings. For practitioners who commenced Collaborative Practice prior to January 1, 2015, completion of training that met the requirements of the IACP Minimum Standards for a Collaborative Basic Training then in effect.

3.4 At least one thirty hour training in client centered, facilitative conflict resolution, of the kind typically taught in mediation training (interest-based, narrative or transformative mediation programs).

3.5 In addition to the above, an accumulation or aggregate of fifteen hours of training in any or all of the following areas:

- Basic professional coach training
- Communication skills training
- Advanced mediation training
- Collaborative training beyond minimum fourteen hours of initial Collaborative training

3.6 A minimum of three hours aimed at giving the mental health professional a basic understanding of family law in his/her own jurisdiction.

4. IACP Minimum Standards for Collaborative Financial Practitioners:

4.1 Professional license or designation in good standing in one of the following:

- CFP [Certified Financial Planner]
- CPA [Certified Public Accountant]
- CA [Chartered Accountant]
- CMA [Certified Management Accountant]
- CGA [Certified General Accountant]
- ChFC [Chartered Financial Consultant]

or such other equivalent license or designation in a state, province or country that requires a broad-based financial background and continuing education, and that is regulated by a governing body under a code of ethics.

4.2 Background, education and experience in:

- Financial aspects of divorce
- Cash management and spending plans
- Retirement and pension plans
- Income tax
- Investments
- Real estate
- Insurance
- Property division
- Individual and family financial planning concepts

4.3 Completion of an Introductory Collaborative Practice Training or an Introductory Interdisciplinary Collaborative Practice Training that meets the requirements of IACP Minimum Standards for Introductory Collaborative Practice Trainings and Introductory Interdisciplinary Collaborative Practice Trainings. For practitioners who commenced Collaborative Practice prior to January 1, 2015, completion of training that met the requirements of the IACP Minimum Standards for a Collaborative Basic Training then in effect.

4.4 In addition to the above, an accumulation or aggregate of twenty hours of education in the financial fundamentals of divorce giving the financial professional a basic understanding of family law in his/her own jurisdiction, including:

- Divorce procedures
- Property - valuation and division
- Pensions and retirement plans
- Budgeting - income and expenses
- Child and spousal support
- Future Income projections
- Financial implications of different scenarios for settlement

4.5 At least one thirty hour training in client centered, facilitative conflict resolution, of the kind typically taught in mediation training (interest-based, narrative or transformative mediation programs).

4.6 In addition to the above, an accumulation or aggregate of fifteen hours of training in any or all of the following areas:

- Communication skills training
- Collaborative training beyond minimum fourteen hours of initial Collaborative training
- Advanced mediation training
- Basic professional coach training

IACP Minimum Standards for Introductory Collaborative Practice Trainings and Introductory Interdisciplinary Collaborative Practice Trainings⁴

1. Introduction. These standards are established with an awareness of the aggregate nature of learning. Skill is acquired from actual application of education to experience over time and continuing education to enhance skill.

A trainer must be familiar with the following definitions, principles and standards adopted by the International Academy of Collaborative Professionals (IACP):

- Definition of Collaborative Practice
- Ethical Standards for Collaborative Practitioners
- Minimum Standards for Collaborative Practitioners
- Minimum Standards for an Introductory Collaborative Practice Training
- Minimum Standards for Collaborative Practice Trainers

A training in the Collaborative Practice process satisfies the Minimum Standards for an Introductory Collaborative Practice Training or an Introductory Interdisciplinary Collaborative Practice Training when it complies with the requirements prescribed herein. This training will introduce the Collaborative Practice process while recognizing that proficiency or skill cannot be attained from this training alone.

Trainers will familiarize participants with the theories, practices and skills so participants can begin to develop the self-awareness and understand the core requirements for effective Collaborative Practice.

2. Core Curriculum. Trainers will provide instruction to the participants on the following subjects:

(a) Process. The training will include the following subjects concerning process:

- (1) The Collaborative Practice process as a structure to create working relationships to reach agreements and resolve disputes;
- (2) The range of process options and Collaborative Practice professional team configurations available to clients given their situation;
- (3) Organizational considerations in managing a Collaborative Practice matter, including—
 - (i) providing a structure, options, and protocols for the process;

⁴The Minimum Standards for Introductory Collaborative Practice Trainings and Introductory Interdisciplinary Collaborative Practice Training were approved October 2014. In 2017, the Board removed the designation of these standards as "interim".

- (ii) managing the case within the structure established by the professionals;
- (iii) setting expectations for clients and professionals;
- (iv) defining issues and determining tasks; and
- (v) planning, conferring and coordinating among professionals including pre-meeting and post-meeting briefings with the professionals and clients.

(4) Considerations when working as a team, including as an interdisciplinary team, and the contribution and role of each professional;

(5) Recognition of the emotional, financial, and legal elements of the clients' conflict in all cases and how each element might impact the process; and

(6) The applicability of local law to the process.

(b) Skills Required for the Collaborative Practice Professional. The training will include the following subjects concerning skills:

(1) The professional's responsibility to maintain a safe and productive environment for all;

(2) The professional's responsibility to educate clients how to engage in productive behavior;

(3) The impact of professional language and modeling behavior to improve the clients' ability to effectively participate in the Collaborative Practice process;

(4) The professional's duty to assist the client in developing effective communication skills to enhance the prospects for reaching agreements during the Collaborative Practice process and in the future;

(5) The professional's ability to effectively assess the capacity of the client for effective participation in the Collaborative Practice process;

(6) The professional's awareness of power dynamics and imbalances that may exist in the Collaborative Practice process, the impact on the process, and how the professionals can address such issues; and

(7) The professional's awareness of the need for assessment of coercive and violent relationships.

(c) Theory and Ethics. The training will include the following subjects concerning theory and ethics:

(1) Dynamics of interpersonal conflict. For trainings focused on domestic relations matters, divorce as a life transition and the dynamics of divorce,

and for other family matters the impact of transitions on interpersonal dynamics and relationships;

(2) The future-focused decision-making orientation of Collaborative Practice. For trainings focused on domestic relations matters, concepts related to restructuring families;

(3) The difference between facilitative negotiation, including interest-based theory and methods as contrasted with positional negotiation, including rights-based theory and methods;

(4) Ethical considerations including the need to discuss carefully the available process options with the client, informed consent, integrity, professionalism, diligence, competence, advocacy, and confidentiality;

(5) Recognition that each professional has different ethical considerations;

(6) The role of the law as one of multiple reference points for decision-making. Other reference points include the interests and needs of each client, each client's sense of fairness, practical and economic realities, prior agreements, the goals of the clients, and cultural, emotional, and other factors; and

(7) IACP standards that are applicable to practitioners, including Minimum Standards for Collaborative Practitioners and Ethical Standards for Collaborative Practitioners.

(d) Process Value and Costs. The training will include the following subjects concerning process value and costs:

(1) Understanding the broader interests which can be addressed in Collaborative Practice, including the long-term benefits of client self-determination, reaching a durable agreement, preserving relationships, and the comparative economic and relational consequences of process choices;

(2) Conveying to clients the value of Collaborative Practice including, where applicable, the value of an interdisciplinary professional team, as distinct from and together with consideration of professional fees and financial cost variables of process choices;

(3) Making realistic statements to clients about financial realities of dispute resolution processes, and the clients' contributions to cost containment throughout the process; and

(4) Awareness that individual professional choices and behavior can have a significant impact on the efficiency, value, and cost of the process.

(e) Professional Teamwork. As used herein, a “team” can be any configuration of professionals, whether lawyers-only or interdisciplinary. The training will include the following subjects concerning professional teamwork:

- (1) Professional team development, formation, configuration, and dynamics and the responsibility of each professional to establish and maintain a collaborative environment;
- (2) The professional and interpersonal differences between working as an independent professional and working as part of a Collaborative Practice team, including a team with members from different disciplines;
- (3) The nature of the roles and work performed by each professional discipline in an interdisciplinary Collaborative Practice matter, and how to maximize the knowledge and skills of each team member, both individually and together, in order to effectively work on a matter; and
- (4) For professional team members from different disciplines, the specific boundaries and ethics common to each profession, and the unique considerations these pose when working together as a team.

(f) Practice Development and Practice Groups. The training will include the following subjects concerning practice development and practice groups:

- (1) Initiation of Collaborative Practice matters in the professional’s unique communities, and the responsibility for each professional to develop his/her own practice;
- (2) The benefits, structure and role of practice groups, and the individual responsibility for involvement in practice group activities;
- (3) The importance of developing and expanding Collaborative Practice skills through additional trainings, experience, and interactions with experienced practitioners, and how an Introductory Collaborative Practice Training serves solely as a foundation; and
- (4) The role of IACP as the International organization that promulgates standards and advances Collaborative Practice, and the resources IACP makes available to support practitioners.

3. Introductory Interdisciplinary Collaborative Practice Training.

(a) An Introductory Interdisciplinary Collaborative Practice Training shall meet all requirements of an Introductory Collaborative Practice Training plus the requirements of this Section 3. The core curriculum for an Introductory

Interdisciplinary Collaborative Practice Training is the same as the core curriculum for an Introductory Collaborative Practice Training.

(b) In an Introductory Interdisciplinary Collaborative Practice Training in the area of domestic relations, the faculty will be composed of a minimum of 1 professional from each of the legal, mental health, and financial disciplines. Otherwise, the faculty will be composed of those interdisciplinary professionals appropriate to the subject matter.

(c) An Introductory Interdisciplinary Collaborative Practice Training should include instruction of participants from each discipline by members of each of the other disciplines.

4. Training Organization and Procedures

(a) Duration. An Introductory Collaborative Practice Training will be a minimum of 14 hours of classroom time (excluding break times) completed over no more than 90 days, and preferably over 2 or 3 consecutive days. Participants will attend in person.

(b) Methods. An Introductory Collaborative Practice Training should include multiple learning modalities – interactive, experiential, and lecture elements. Examples include demonstrations, role plays, small group exercises, interactive dialogues, fish bowls, and educational games.

(c) Materials. An Introductory Collaborative Practice Training should include written materials that are useful for reference and practice by the Collaborative Practice practitioner after the training and will include the IACP Minimum Standards for Collaborative Practitioners and IACP Ethical Standards for Collaborative Practitioners.

(d) Evaluations. An Introductory Collaborative Practice Training should include evaluations of the training and trainer(s) by the participants.

IACP Minimum Standards for Collaborative Practice Trainers⁵

These standards are established with an awareness of the aggregate nature of learning. Skill is acquired from the successive application of education to experience over time and continuing education to enhance skill. The IACP sets the following minimum standards for trainers after January 1, 2015, to conduct a training that meets IACP Minimum Standards for an Introductory Training:

1. Minimum Experience for Trainers:

1.1 A trainer will have completed at least 10 different Collaborative Practice matters of which at least 6 will have been in the interdisciplinary model, accumulating at least 50 hours of practice in Collaborative Practice. For trainings that are focused solely on practice areas other than domestic relations, trainers will have completed at least 8 different Collaborative Practice matters, accumulating at least 50 hours of practice in the Collaborative Practice.

1.2 During the 5 years prior to first conducting trainings, a trainer will have taken primary responsibility for preparing and making educational presentations that total at least 15 hours in presentation time, with 1 presentation lasting no less than 3 hours and each other presentation lasting no less than 45 minutes.

1.3 Prior to conducting trainings, a trainer will have attended a minimum of two Introductory Collaborative Practice trainings. At least one such training will be introductory training in the interdisciplinary model to provide the trainer the experience of observing the principles, methodology and practice of teaching.

2. Minimum Training for Trainers:

2.1 A trainer will have satisfied all training requirements set forth in the Minimum Standards for Collaborative Practitioners.

2.2 A trainer will have completed at least 10 hours of client-centered facilitative conflict resolution training beyond those set forth in the Minimum Standards for Collaborative Practitioners. If a trainer is conducting trainings in the domestic relations area, such training completed will include a substantial amount pertinent to domestic relations dispute resolution.

2.3 A trainer will have a minimum of 9 additional hours of relevant education on advanced Collaborative Practice topics.

⁵The Minimum Standards for Collaborative Practice Trainers were approved by the Board in October 2014 and amended February, 2015. In 2017, the Board removed the designation of these standards as "interim"

3. Licensing/Certification: A trainer will be licensed or certified for his/her field of practice, and be in good standing and not restricted in practice or subject to any conditions or monitoring of his or her conduct by the licensing board governing the trainer's field of practice. A trainer will have no public record of discipline of any nature within the last 5 years.

4. IACP Training Standards: A trainer will be familiar with the Minimum Standards for an Introductory Training and have the skills to conduct that training.

5. Skills Training: A trainer shall be qualified by education, training, and experience to inform and educate about skills relative to communication, problem-solving, facilitative dispute resolution, mediation, interpersonal relationships, conflict management and resolution, interest-based negotiation, teamwork, and process.

A trainer should attend educational courses or workshops that emphasize adult learning principles. A trainer should be able to teach adults through meaningful dialogue and didactic presentations, set up demonstrations, structure role plays, and employ other experiential learning models.

6. Knowledge about Area of Dispute: A trainer will have an appropriate understanding of the general area to which the dispute relates, including, a recognition that financial decisions may have far-reaching and long-term financial and tax implications and, when training in the domestic relations area, knowledge of the grief process, child development, and the dynamics of the divorcing/restructuring family.

7. Particular Professions: In addition to the above, those offering training in particular disciplines as part of the Collaborative Practice process will satisfy the following:

7.1 Lawyer:

- A minimum of 5 years in active practice, including 5 years of experience in the particular discipline which is the subject of the training (e.g., 5 years of domestic relations experience for Collaborative Practice trainings dealing with divorce and separation).

7.2 Child Specialist:

- A minimum of 5 years clinical experience with specialty focus on children.
- In-depth understanding of children's unique issues in domestic relations.

7.3 Financial:

- A minimum of 5 years in financial consulting with significant experience in the financial and tax aspects of the general area to which the dispute relates.

7.4 Divorce Coach:

- A minimum of 5 years of clinical experience focusing on couples and families, and in-depth knowledge of: 1) short-term therapy and coaching models, 2) divorce and the psychosocial impact of divorce on families, and 3) basic elements and guidelines for creating parenting plans.
- In depth knowledge of family dynamics and systems theory and child development.

7.5 Other Professionals:

- A minimum of 5 years experience in their field.

8. Trainers in the Interdisciplinary Model of Collaborative Practice:

The interdisciplinary model of Collaborative Practice for domestic relations matters includes the mental health, financial, and legal disciplines as part of the Collaborative team. In addition to the requirements above, each trainer in the Interdisciplinary team model will have knowledge of team interactions and specific issues unique to the interdisciplinary model.

9. Checklist. To assist potential trainers in assessing whether they meet the requirements, the following checklist is provided as a convenience:

Summary of IACP Trainer Requirements

- 50 hours of Collaborative Practice work.
- 10 completed Collaborative matters, 6 of which are interdisciplinary. For trainings focused solely on non-domestic relations areas, 8 completed Collaborative matters.
- 15 hours of educational presentations in last 5 years of which one is at least 3 hours in duration, and the remainder at least 45 minutes each.
- Attend at least 2 Introductory trainings, at least one of which is an Interdisciplinary Introductory Collaborative Practice training.
- 10 additional hours of facilitative dispute resolution training in addition to the 30 hours required for all Collaborative Practice professionals.
- 9 hours additional education on relevant advanced Collaborative Practice topics.
- A trainer should attend educational courses or workshops that emphasize adult learning principles.

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International Academy of Collaborative Professionals

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THE FUTURE OF COLLABORATIVE PRACTICE: A VISION FOR 2030¹

Forrest S. Mosten

“You are not here simply to make a living. You are here in order to enable the world to live more amply, with greater vision, with a finer spirit of hope and achievement”²

*Woodrow Wilson, 28th President of the United States
Visionary of the League of Nations*

In just twenty years, collaborative practice has grown and blossomed into a powerful force in the world of conflict resolution. The goal of this special issue has been to examine the state of collaborative practice today, where some leading collaborative practitioners believe we are heading in the near future and, now, I offer some of my predictions of where the field may be twenty years from now, in 2030. It is clear to everyone who is touched by collaborative practice that it is truly a very effective way to help our clients and that the future is wide open to build and improve collaborative practice in directions that may seem impossible to fathom in 2011. Here are twelve ways in which collaborative practice will evolve in the next two decades:

I. CLIENTS WILL DEMAND COLLABORATIVE PRACTICE AND MEDIATION FROM PROFESSIONALS AND MAKE IT THEIR FIRST CALL IN TIME OF CONFLICT

Being a rights-based and competitive society, both the public and the legal profession have encouraged the expanded use of lawyers to remedy and redress problems and damages. Historically, when in conflict, people generally have made their first call to a lawyer with the expectation of having the justice system vindicate the situation. The consequence of this custom has been to create lawyer domination of disputes, often with a legalistic and narrow approach to resolving those disputes.³ However, as collaborative law has clearly demonstrated, the public is becoming more aware of the downsides of litigation with its emotional and financial costs that can potentially destroy the disputants and their children. The explosive growth of collaborative practice shows that the public, when aware, will often choose a nonadversarial option and will likely receive better results in the end.

With consumer use of collaborative practice, mediation, other new paradigm⁴ client centered services, in twenty years, I predict that the first call of a person in legal trouble will more often be to a mediator, collaborative law attorney or other non-litigation professional. Forty years of collaborative practice will have earned the respect and confidence of the public so that it will be a top process choice of both consumers and recommending professionals.

II. THE UNIFORM COLLABORATIVE LAW ACT WILL BE ENACTED IN MOST STATES AND VERSIONS OF IT WILL BE THE LAW IN JURISDICTIONS OUTSIDE OF THE UNITED STATES

Uniform Laws not only provide templates for individual states to consider—the adoption of a uniform law, in itself provides legitimacy for new forms of legal practice.⁵ As more and more jurisdictions pass legislation with amended versions of the UCLA there will be a logrolling effect—

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momentum will build for collaborative law as policy with courts, professionals, and the public giving support for that policy.⁶ The Prefatory note authored by Professor Andrew Shepard, Reporter of the Uniform Law and Editor of this Journal, is probably the best statement of the conceptual and legal underpinnings of collaborative law.⁷

III. COLLABORATIVE PRACTICE WILL BE INCORPORATED INTO THE MAINSTREAM OF THE LEGAL PROFESSION

In addition to being an alternative to trials, collaborative practice will become an integral part of ancillary court programs, education for litigants,⁸ and lists of collaborative practitioners will be available for litigants at consumer self service centers and client libraries within the courthouse.⁹

The momentum built by the ABA Ethical Opinion¹⁰ conditionally approving collaborative law as an ethical practice (if based on informed consent) and the passage of the UCLA will lead to specific professional rules of conduct on both national and state levels involving collaborative practice. While such model rules have currently been promulgated primarily within the collaborative community, just as unbundling legal services¹¹ and mediation¹² have been the subject of rule-making by the organized legal profession, collaborative practice will follow suit. The consideration and promulgation of such rules by the ABA and local bar associations and law societies will further legitimize collaborative practice and make it more accountable. Texas has already established a separate state bar section on collaborative practice rather than have collaborative practice as a sub-section or committee of a family law or dispute resolution section.¹³ In 2030, the state or nation without an independent section for collaborative practice will be the exception.

Family lawyer education and specialization will include increased training in negotiation, mediation, collaborative law, and other innovative alternatives. Just as the Law Society of New South Wales¹⁴ has developed a specialization in dispute resolution (in addition to substantive areas such as family law, tax, etc), most bar associations and law societies will develop similar specialization programs that will include collaborative law by 2030.

To prepare future lawyers, every law school will have at least a survey course on collaborative practice.¹⁵ Most schools will have companion courses in unbundled legal services, lawyer as peace-maker¹⁶, interdisciplinary service delivery, and advanced courses in traditional subject areas (family law, trial advocacy, client counseling, business planning) that will feature modules of collaborative practice.

IV. MENTAL HEALTH AND FINANCIAL PROFESSIONAL BODIES WILL INCORPORATE COLLABORATIVE PRACTICE INTO THEIR RULES OF PROFESSIONAL CONDUCT AND BE PART OF PROFESSIONAL EDUCATIONAL CURRICULUM

As an interdisciplinary form of service delivery and opportunity for new professional opportunities, collaborative practice will become part of the professional education and license qualification for mental health and financial professionals. Just as mediation training qualifies for continuing educational credit for these professionals in many jurisdictions, collaborative practice courses will be long approved for continuing educational credit by 2030.

In the mental health field, in addition to traditional education for future therapists and social workers, students will need training to perform professional roles such as: neutral or party collaborative coach; neutral collaborative child specialist; neutral sole mediator; interdisciplinary co-mediator; coach for parties in mediation; divorce coach for pro se litigants; parenting comprehensive or mini-evaluator; special master; parenting coordinator; and therapist specializing in helping families go through divorce and competently advise clients about legal process, including collaborative law.¹⁷ Mental health professionals can join lawyers and other professionals in playing this triage

role in their private offices. Mental health professional and educational bodies will also sanction these new services to qualify for required supervision hours necessary for licensure.¹⁸

Financial professionals will also modify their coursework to prepare them to work in the “new paradigm” world. In addition to learning the traditional skills of auditing, tax preparation, and in-house business accounting, in 2030, financial students and professionals will be trained to perform these emerging roles: neutral forensic in collaborative practice and mediations; divorce appraisers of ongoing businesses; arbitrators of divorce family issues; expert witnesses in divorce matters; divorce tax specialist; and mediators and interdisciplinary co-mediators.¹⁹

V. COURTS AND LEGISLATURES WILL RECOGNIZE COLLABORATIVE PRACTICE AND MEDIATION AS PRIMARY MODELS OF DISPUTE RESOLUTION AND ADOPT A SERIES OF INCENTIVES TO UTILIZE COLLABORATIVE PRACTICE

In the past twenty years, mediation has morphed from being considered *alternative* dispute resolution to *appropriate* dispute resolution (sometimes consensual dispute resolution) to dispute resolution. In the Family Court of Australia, alternative dispute resolution (ADR) is litigation, arbitration, or other “top-down” processes.” Primary dispute resolution (PDR) includes mediation, collaborative practice, negotiation, and other “bottom-up” consensual processes. By 2030, most jurisdictions will have adopted the Australian model of PDR. In addition to being an alternative to courts, collaborative practice will become an integral part of court programs, education for litigants, and lists of collaborative practitioners will be available for litigants at consumer self service centers²⁰ and client libraries within the courthouse.²¹

The innovative reforms currently in place to encourage use of collaborative law will become commonplace. Already, a few jurisdictions are taking steps to promote collaborative practice and mediation with the goal of easing the court load and helping the public resolve conflicts in a faster and less painful process. For example, now, in 2010, in the Los Angeles Superior Court every litigant is sent a letter from the Presiding Judge of the Family Law Department encouraging the use of collaborative practice and mediation.²² The Presiding Judge handles all collaborative law matters (signing of Participation Agreement with Qualification Clause is required²³) so that parties are not required to attend standard status conferences and other court proceedings while the collaborative process is ongoing, and parties who complete their settlements within the collaborative process are afforded expedited processing of their judgments. There are incentives in place already to reward those parties who use these methods of dispute resolution and the movement towards increasing these incentives is very positive momentum to increase the responsiveness of the court system to the needs of its citizens. Additionally, the societal encouragement to expand the dispute resolution process beyond adversarial litigation will continue to be implemented in the courts as they will continue to favor collaborative practice and mediation and other processes that empower litigants to take control over the process of resolving legal disputes.

Future reforms that will be part of the collaborative landscape in 2030 may include²⁴:

- A. Assignment of collaborative law matters will generally be made to one court with a trained settlement judge who can monitor cases and keep them out of the general litigation system.
- B. Collaborative cases will be identified as such in court filings with criteria developed for such identification by court staff.
- C. Attorney fee awards will be given credit if counsel suggests or agrees to collaborative law in appropriate cases. Similarly, those parties that refuse to participate in collaborative practice without a reasonable basis will be taxed in respect to attorney fees incurred during litigation.
- D. Just as there is mandatory mediation for many custody and visitation issues, judicial officers will be given authority to order cases into collaborative law. Such collaborative practice will be generally paid by the parties using these services with relief *In forma pauperis* for those parties who can demonstrate an inability to pay.

- E. Traditional cases in the system (including those involving post-decree issues) involving self represented litigants will be subject to judicially initiated crash collaborative settlement teams of collaborative lawyers, mental health professionals and financial professionals who will meet with the parties either in the courthouse or in private offices.
- F. Just as courts have mandatory parenting education programs, courts and legislatures will fund and promote mandatory “process” education for litigants that will include major segments on collaborative practice.
- G. Judges, family court services, and clerks will routinely participate in court sponsored training for interest based negotiation, mediation, collaborative practice, and other skills of consumer service to improve legal access.²⁵
- H. Collaborative practice organizations will have longstanding positive relationships with the bench for increased understanding on collaborative innovations put into place within the court system and needs of the courts to which the collaborative community might contribute.
- I. Courts, legislatures, and other government bodies will have established sophisticated programs of generic advertising and consumer education²⁶ for more public and professional understanding and use of collaborative practice.
- J. Courts, government and professional bodies will have collaborative practice Impact Reviews of Laws and Policies²⁷ to assure consistency of such laws and policies with the goals of collaborative practice.

VI. MEDIATION WILL BE AN ACCEPTED AND OFTEN USED FEATURE WITHIN COLLABORATIVE PRACTICE

By 2030, the early power struggle and misguided conflict between mediation and collaborative practice will be a faded footnote in peacemaker history. Mediation will be used routinely in collaborative practice with independent mediators joining the collaborative process and collaborative professionals being engaged by clients to support mediations. In addition, neutral facilitation for conflicts between members of the collaborative team will be standard protocol. Such facilitation will be conducted by team members themselves and/or by use of independent mediators.²⁸

Collaborative professionals will be required to undergo extensive mediation training. Such training will be mandated within the collaborative community by umbrella organizations and individual practice groups as well as by courts, professional bodies and legislatures that will have assumed a larger role in support and possibly regulation of collaborative practice.

VII. REQUIREMENTS FOR INFORMED CONSENT NOW REQUIRED OF COLLABORATIVE PRACTITIONERS WILL BE REQUIRED OF ALL ATTORNEYS

The emerging duty of lawyers to competently advise clients about alternatives that is currently in force in many jurisdictions²⁹ and that is incorporated in the UCLA for collaborative attorneys³⁰ will be an accepted professional obligation for all attorneys.

In 2030, before filing initial court proceedings, lawyers representing litigants will be required in most jurisdictions to certify that their clients have been fully informed of the benefits and risks of mediation and collaborative representation.³¹

VIII. COLLABORATIVE SERVICES WILL BE ROUTINELY UTILIZED BY THE POOR AND OTHER UNDERSERVED POPULATIONS

At present, collaborative practice is largely limited to the wealthiest segment of American families.³² Supported by the UCLA’s understanding of the difficulty of the underserved to obtain substitute

counsel if the collaborative process terminates,³³ by 2030 the benefits of collaborative practice will be more fully available to the poor and working poor. While the UCLA requires the involvement of two lawyers to qualify as collaborative law, over the next two decades new processes will develop under different names to encourage collaborative principles and procedures to be used when one party is pro se or has a limited scope lawyer who will not sign a collaborative participation agreement. Other proposals by Professor J. Herbie DiFonzo, seen in his *Vision for Collaborative Law* will become common practice in 2030, including: unbundling use of collaborative professionals so that fees can be reduced;³⁴ collaborative professionals will more readily refer parties to mediation when a single professional (sometimes supplemented by unbundled counsel) may be more affordable; and court programs utilizing collaborative processes will be part of the court systems in most jurisdictions.³⁵

IX. COLLABORATIVE PRACTICE WILL BE ROUTINELY USED OUTSIDE OF FAMILY LAW AND MOST LAW FIRMS WILL HAVE INTERNAL COLLABORATIVE AND SETTLEMENT COUNSEL DEPARTMENTS

The current nascent efforts to extend the collaborative process to business, probate, personal injury, intellectual property and other non-family areas of the law will continue and grow over the next two decades.³⁶ Mediation consumers today differ in their preference for “process” or “content” oriented mediators. Yet whatever their style at the negotiation table, mediators are known as “mediators.” They may specialize in divorce or in environmental public policy issues, though they are all still called mediators. The same will be true for collaborative professionals by 2030. The values and perspectives that bind collaborative professionals will transcend areas of practice so that family collaborative professionals and non-family (civil) collaborative professionals will all be called collaborative professionals.

Regardless of their areas of practice, different business models of practice will be viewed through the collaborative lens whether collaborative services are provided by sole practitioners working out of their homes or part of large law firms taking up several floors of urban office skyscrapers. Currently, in large corporate litigation, some businesses are retaining separate settlement counsel,³⁷ who are bound by a disqualification clause built on the family collaborative model. There are two tracks of such settlement counsel: single track and dual track. In the single track, the litigating lawyers “stand down” and create a litigation freeze while settlement counsel work with the parties directly. If no settlement is reached, the litigation counsel steps back in to resume the court proceedings.³⁸ In the dual track, the litigator and the settlement counsel work on separate tracks and assume that there are litigation-related issues that cannot await settlement efforts. This may occur early in the process, either because there are immediate legal issues that must be addressed or because the client simply wishes to proceed on all fronts without delay, or it may occur later in the litigation process when delay of the litigation process is not practical or not permitted by the court.³⁹ The model of settlement counsel will evolve and grow so that by 2030, corporate law firms that do not offer settlement counsel will be the exception and at a competitive disadvantage in the law firm marketplace.

X. COLLABORATIVE PROFESSIONALS WILL UTILIZE PREVENTIVE SERVICES TO IMPROVE FUTURE RELATIONSHIPS AND AVOID FUTURE CONFLICT

Collaborative practice has focused on resolving current disputes and conflicts. The future and unlimited marketplace for collaborative professionals is a preventive approach that will be used symptomatically and asymptotically.⁴⁰ Symptomatic preventive planning is using the experience, pain, and cost of recent legal trouble to motivate clients to consider ways to avoid similar problems in the future. Asymptomatic legal prevention is working with clients to probe legal soft spots and take steps to prevent future conflict when no dispute is currently raging.⁴¹

By 2030, it will be standard practice for collaborative professionals who aim to prevent future conflict to build in postsettlement scheduled meetings and assessments with parties who have an ongoing relationship. Collaborative professionals can encourage parties to consider meeting semi-yearly or annually to discuss parenting and/or support agreements. Another asymptomatic approach is for the collaborative professionals to calendar executory settlement provisions or life cycle events for planned future discussion.⁴²

In the next twenty years, collaborative professionals will expand services to preventive rather than disputed matters. Building on the success and public acceptance of collaborative resolution of divorce, the public will seek this approach in working out premarital and cohabitation agreements,⁴³ forming a business, planning an open, surrogate, or step-parent adoption, gearing up for a construction project, or other matters involving continuing relationships.⁴⁴

XI. COLLABORATIVE PROFESSIONALS WILL MORE OFTEN BE FULL TIME PEACEMAKERS AND REFUSE ANY ENGAGEMENTS INVOLVING ADVERSARIAL LITIGATION

Due to the youth of the collaborative movement that has not yet developed into a critical mass of profitable practice, most collaborative professionals are still litigating matters during the majority of their time despite the fact that the number of professionals who devote themselves to full time peacemaking is growing.⁴⁵

Just as specialization of peacemaking lawyering will be institutionalized within the profession,⁴⁶ so too will the trend of lawyers who eschew litigation and fill their professional time with direct profitable client peacemaking work such as collaborative practice, unbundled professional services, transactions involving continuing relationships, and confidential evaluative and consulting engagements.⁴⁷ While collaborative organizations such as IACP and most practice groups appreciate the need to accommodate both full time peacemakers and those that conduct a collaborative session on Monday morning and are in court on Monday afternoon, by 2030 Nancy Cameron's two-horse dilemma will evolve to collaborative organizations that require their members to be full time peacemaking. This may result in the development of a bifurcated legal profession which somewhat mirrors the British solicitor-barrister model with possibly three types of legal organizations in which collaborative professionals are members: general Bar Associations that permit all licensed attorneys regardless of their professional roles, traditional collaborative organizations that permit lawyers who both litigate and do collaborative work, and peacemaking lawyer organizations that require members to concentrate their training and service solely to non-adversarial processes.

XII. COLLABORATIVE PRACTICE GROUPS WILL PROLIFERATE TO EVERY CONTINENT AND EACH GROUP WILL OFFER A MENU OF PRACTICE MODELS

After twenty years of development, there are practice groups in eighteen countries reported by the International Academy of Collaborative Professionals.⁴⁸ Most of the growth outside of North America has occurred in the last five years. By 2030, not only will the number of countries dramatically increase, but also the explosion of collaborative professionals and diversity of practice groups will defy current accurate predictions.⁴⁹

The nature of the practice groups will also change significantly in the next two decades. Today, there are two basic models: open and closed. Open practice groups accept anyone who wishes to purchase membership but often have more restrictive policies of training and practice experience to be able to participate on website referral rosters.⁵⁰ Closed practice groups limit membership to build a shared and committed collaborative culture within the group as well as to maximize resources for shared marketing.⁵¹

Future practice group evolution will provide for single model groups, multi-model groups, and firms of collaborative professionals who generally only work with each other within set interdisciplinary teams and share income and expenses.⁵² Other collaborative professionals will share an office but act as independent contractors permitting officemates to be members of different practice groups and different teams.⁵³ Membership in practice groups will also evolve significantly in the next twenty years. In addition to lawyers, mental health professionals and financial professionals (neutral and party coaches, child specialists, and treating therapists and social workers), such groups may be open to physicians, real estate and insurance professionals, mediators and dispute system designers, and other professionals interested in and committed to collaborative practice.

XIII. CONCLUSION

This article offers twelve predictions of ways in which collaborative practice will grow and flourish within the next twenty years. As in all predictions, these are guesses about how collaborative practice will develop based on past experience of the field's development, coupled with my personal vision for the future.

The key to whether these predictions will come true may depend on the vision created by current collaborative professionals and those that choose that path in the years ahead. For over twenty years my inspiration in this context has been Tom Peters' discussion of how vision works and such insight may also benefit the collaborative movement:

- A vision is inspiring
- A vision is clear and challenging—and about excellence
- A vision makes sense in the marketplace and stands the test of time
- A vision must be stable but constantly challenged
- A vision is a beacon and controls your actions when all else is up for grabs
- A vision is aimed at empowering you first, and your clients second
- A vision prepares for the future, but honors the past; and
- A vision is lived in details, not in broad strokes⁵⁴

Peters' criteria for the vision of Collaborative Practice may be the foundation for the baby steps necessary to build on collaborative practice's current foundation, to achieve the implementation and lessons from the research agenda proposed by John Lande⁵⁵ and others to help expand the reach of the field to increase its access to the underserved, to expand services offered within the collaborative umbrella, and to create impact of collaborative practice on professional service providers, on the institutions that support it, and for the public that we serve.⁵⁶

NOTES

1. Special gratitude and recognition for the inspiration of future visioning of the Oregon Task Force on Family Law Reform Commission (William Howe III) and the Oregon Supreme Court's ground breaking publication, Justice 2020 (Wallace Carson, Chief Justice). See William Howe III & Maureen McKnight, *Oregon Task Force on Family Law: A New System to Resolve Family Law Conflicts*, 33 FAM. & CONCILIATION CTS. REV. 173 (1995); see also J. Herbie DiFonzo, *A Vision for Collaborative Practice: The Final Report of the Hofstra Collaborative Law Conference*, 38 HOFSTRA L. REV. 569 (2009). My own desire to vision the future was influenced by my mentor, Professor Louis M. Brown (1909–1996). In 1989, Professor Brown, the recognized Father of Preventive Law, crafted an Agenda for the Future with sixty-eight recommendations. Unpublished Agenda and Supporting Memoranda are in the author's possession and available upon request.

2. Woodrow Wilson, http://www.brainyquote.com/quotes/authors/w/woodrow_wilson.html (last visited Nov. 26, 2010).

3. Leonard L. Riskin & Nancy A. Welsh, *Is That All There Is? "The Problem" in Court-Oriented Mediation*, 15 GEO. MASON L. REV. 863, 932 (2008) (commenting on the impact of lawyers and lawyer mediators in narrowing the problem definition and discussion court mediation settings to reflect lawyer perspectives).

4. See FORREST S. MOSTEN, *COLLABORATIVE DIVORCE HANDBOOK: HELPING FAMILIES WITHOUT GOING TO COURT* (2009).
5. For an overview of the impact of the UCLA, see the special issue on the UCLA, by Hofstra Law Review and The Collaborative Review: 38 HOFSTRA L. REV. (Winter 2009); 11 COLLABORATIVE REV. (Summer 2010).
6. For a hint of how synergy from various sectors built the field of mediation, see Forrest S. Mosten, *Institutionalization of Mediation*, 42 FAM. CT. REV. 292 (2004).
7. The final version of the Uniform Collaborative Law Act (2010) can be found at http://www.law.upenn.edu/bl/archives/ulc/ucla/2010_final.htm.
8. See Letter to Litigants, www.wiley.com/collaborativedivorcehandbookdownload#22 (last visited Nov. 26, 2010).
9. See FORREST S. MOSTEN, *Mediation Legacy: The Family Law System of the Future*, in THE COMPLETE GUIDE TO MEDIATION 373 (ABA 1997); Forrest S. Mosten, Southern California Mediation Association Conflict Resolution Library Fund, <http://www.scmmediation.org> (last visited Nov. 26, 2010).
10. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 07-447 (2007).
11. See ABA Unbundling Resource Center, <http://www.abanet.org/legalservices/delivery/delunbund.html> (last visited Feb. 11, 2011). This is the ABA's resource center maintained by the Standing Committee on the Delivery of Legal Services. This is the clearinghouse for links to a wide variety of materials on unbundling. See also MOSTEN, *supra* note 4; FORREST S. MOSTEN, UNBUNDLING LEGAL SERVICES (2000); Forrest S. Mosten, *Unbundling Legal Services to Help Divorcing Families*, in INNOVATIONS IN FAMILY LAW PRACTICE (Kelly B. Olson & Nancy Ver Steegh eds., Association of Family & Conciliation Courts 2008); Forrest S. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 FAM. L.Q. 421, 449 (1994).
12. In his fall 2010 column as chair of the ABA Dispute Resolution Section, Wayne Thorpe outlined just a few of such developments in mediation: Model Standards of Conduct for Mediators (2005), Uniform Mediation Act (2002), Section of Dispute Resolution's Resolution on Good Faith in Mediation (2004), and Amended Model Rules of Conduct, especially Rules 1.12. and 2.1. R. Wayne Thorpe, *From the Chair*, 17 DISP. RESOL. MAG. 2 (Fall 2010); R. Wayne Thorpe, *From the Chair*, Dispute Resolution Magazine 2888 (Fall 2010).
13. Harry Tindall, a national leader in collaborative practice, reports the following: "The Collaborative Law Section, State Bar of Texas, was created this spring by a unanimous vote of the State Bar Board of Directors. Being part of the state bar has many advantages. We are now at the table along with other sections and we are viewed as real lawyers. We have the marketing assistance of the bar in creating websites, blast email and assistance in continuing education programs. Kevin Fuller, partner in the largest family law firm in Texas, is Chair of our section." Posting of Harry Tindall, htindall@tindallengland.com, to CollabLaw@yahoo.com (July 25, 2010) (on file with author).
14. See *Dispute Resolution Evolves from Mediation*, LAW SOC'Y J. 19 (2010). A similar proposal has been made by this author for consideration in the United States. MOSTEN, *supra* note 4, available at http://www.wiley.com/WileyCDA/WileyTitle/productCd-0470395192_descCd-DOWNLOAD.html (last visited Nov. 26, 2010).
15. The Family Law Education Reform Project has already discussed such law school curriculum and produced template modules for use by law professors. See Forrest S. Mosten, *The Potential of the Family Law Education Reform Project for Family Lawyers*, 45 FAM. CT. REV. 5-11 (2007); Mary E. O'Connell & J. Herbie DiFonzo, *The Family Law Education Reform Project*, 44 FAM. CT. REV. 524-70 (2006).
16. See Syllabus for Hamlin School of Law, F.S. Mosten, *Institutionalizing Peacemaking in Society and Within the Legal Profession* (2009), <http://groups.yahoo.com/group/CollabLaw/files/Goodies%20from%20Woody%20Mosten/> (last visited Nov. 26, 2010).
17. In his groundbreaking concept of the Open Door Courthouse at the 1976 Pound Conference, ADR legend, Professor Frank Sander envisioned a triage system in which court consumers would select the appropriate process option that would best fit their case and their personal needs. Frank E.A. Sander, *Varieties of Dispute Processing*, 70 F.R.D. 111 (1976).
18. For example, in California and many other jurisdictions, to qualify for a license, after fulfillment of required course credits and successful passing of written and oral exams, clinical psychologists, social workers, and family therapists must prove completion of 3,000 hours of supervised client work (the number of required hours and inclusion of an oral exam or other supplemental exams [(i.e. Professional Ethics) differ among jurisdictions]).
19. In some Collaborative Full Team Models (see article by Pauline Tesler 239 in this issue), Collaborative Financial Neutrals assume a facilitative mediator role within the professional team who otherwise might have formal alignment with a party. Financial Professionals could benefit from conflict resolution education and training to competently fulfill this neutral role.
20. See MOSTEN, *supra* note 9, at 373 (describing the innovative consumer reforms of the Maricopa Superior Court).
21. See Southern California Mediation Association, Forrest S. Mosten Conflict Resolution Library Fund, www.scmmediation.org (last visited Jan. 8, 2011).
22. The full letter in English and Spanish can be found in MOSTEN, *supra* note 14, at Appendix A: Additional Resources.
23. For the template for such Collaborative Stipulation, see *id.*, at Document #3.
24. My thanks to Judge Mark Juhas of the Los Angeles Superior Court for his contributions in discussions with me in respect to the following future court reforms. Any criticism of these predictions should be directed solely to me and Judge Juhas is released and held harmless therefrom.
25. See Forrest S. Mosten, *Mediation and the Process of Family Law Reform*, 37 FAM. & CONCILIATION CTS. REV. 429 (1999).

26. For a 2011 model of such public support of conflict resolution advertising, see Justice Matters, *Maryland Access to Justice Commission*, <http://mdcourts.gov/publications/ejusticematters/2009/summer/accesstojusticecommission.html> (last visited Jan. 8, 2011); see also Center for Conflict Resolution at Salisbury University, *Honorable Robert M. Bell*, http://www.conflict-resolution.org/sitebody/education/lecture_series/Bell.htm (last visited Jan. 8, 2011).

27. For a similar proposal for Settlement Impact Studies within family courts, see Mosten, *supra* note 25, at 142.

28. At a minimum, collaborative practice and mediation will intersect in seven ways:

1. Advise clients about mediation at the initial consultation, and compare and contrast it with collaborative law.
2. If your client chooses mediation, you can provide unbundled professional services with a collaborative perspective outside mediation sessions.
3. If your client chooses mediation, review and draft agreements reached in mediation and negotiate further for clients outside mediation sessions.
4. If your client chooses mediation, you can provide collaborative coaching and representation at the mediation session itself.
5. Bring in a mediator at the beginning of the collaborative process.
6. Bring in a mediator if problems or an impasse develop during the collaborative process or if the collaborative process is suspended or terminated.
7. Bring in a mediator to resolve conflicts between professionals.

Mosten, *supra* note 14, at 68–69. See also Fred Glassman, *Medi-Collab: Making Room at the Table for Creative Lasting Resolution*, 9 COLLABORATIVE REV. 30–31 (2007).

29. ROBERT F. COCHRAN, JR. ET AL., *THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING* 135–45 (Lexis Nexis 2d ed., 2009). See THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* 21 (West, 2d ed. 2006); Robert F. Cochran, Jr., *Educating Clients on ADR Alternatives: The Rules of Professional Conduct Should Require Lawyers to Inform Clients About ADR*, L.A. LAW., Oct. 2002, at 52; Robert F. Cochran, Jr., *Professional Rules and ADR: Control of Alternative Dispute Resolution Under the ABA Ethics 2000 Commission Proposal and Other Professional Responsibility Standards*, 28 FORDHAM URB. L.J. 895, 897–901 (2001); Forrest S. Mosten & John Lande, *The Uniform Collaborative Law Act's Contribution to Informed Client Decision Making in Choosing a Dispute Resolution Process*, 38 Hofstra L. Rev. 611, 617 n.14 (2009).

30. See UCLA § 14(2).

31. See John Lande & Forrest S. Mosten, *Collaborative Lawyers' Duties to Screen the Appropriateness of Collaborative Law and Obtain Clients' Informed Consent to Use Collaborative Law*, 25 OHIO ST. J. ON DISP. RESOL. 347 (2010); Mosten & Lande, *supra* note 29, at 611.

32. See DiFonzo, *supra* note 1, at 604.

33. See UCLA § 10b; Di Fonzo, *supra* note 1, at 605.

34. See article by the Cypress Practice Group of Seattle, Washington at p. 249 in this issue.

35. See DiFonzo, *supra* note 1, at 606.

36. See International Academy of Collaborative Professionals, *Civil Collaborative Practice*, http://collaborativepractice.com/_t.asp?M=2&T=Civil (last visited Jan. 8, 2011). See generally SHERRIE ABNEY, *AVOIDING LITIGATION: A GUIDE TO CIVIL COLLABORATIVE LAW* (2005). See also Mosten, *supra* note 22, at 176.

37. See Kathy A. Bryan, *Why Should Businesses Hire Settlement Counsel*, 2008 J. DISP. RESOL. 195. Bryan offers her own agenda for future dialogue on Settlement Counsel:

1. A range of options allowing flexibility in the process, such as borrowing from Leonard Riskin's "grid" concept to refine the range of collaborative law options.
2. Exploring the importance of the disqualification provision in the commercial context, including ethical considerations.
3. More settlement counsel practitioners who are trained in interest-based negotiation and mediation advocacy skills.
4. The use of tiered dispute resolution clauses with an initial step that includes some elements of collaborative law, such as the equivalent of a four-way meeting with settlement counsel before the next step, which could be mediation, arbitration, or filing suit.
5. Using different techniques with settlement counsel such as:
 - a. For a range of matters within a business. Often settlement counsel can see patterns among classes or types of cases that allow them to maximize settlement opportunities.
 - b. Unilaterally. When opposing counsel refuses to engage parallel settlement counsel, even one side's settlement counsel can effectively negotiate directly with litigation counsel.
 - c. With and without the disqualification provision. The "pure" form of collaborative law is not always necessary.
 - d. With alternative fee arrangements and other economic incentives. Many settlement counsel are adept at using creative fee arrangements with incentives since they are confident that the overall transaction cost will be lower with early and effective settlements.
 - e. Designating and developing a modified settlement counsel position, where appropriate, on in-house legal staffs. In-house counsel frequently view themselves as settlement counsel and, when they can be objective about the matter, can be highly effective in that role.
6. More defined information exchange procedures applicable to business settings.
7. Client education on preventive legal counseling and interest-based negotiation.

8. Continuing to increase awareness about educational institutions' tendency to emphasize adversarial training.
9. Promoting graduate legal and business curriculums on problem solving and collaborative methods of dealing with conflict.

Id., at 201.

38. Tom Collier of the Washington DC law firm Steptoe and Johnson, has developed a Settlement Counsel group at his firm that specializes in this collaborative practice model. Remarks of Tom Collier at Symposium of Innovative Lawyering at the University of Missouri School of Law (Professor John Lande, Convenor), October 2008.

39. O. RUSSELL MURRAY, *THE MEDIATION HANDBOOK: EFFECTIVE STRATEGIES FOR LITIGATORS* (2006).

40. See THOMAS D. BARTON, *PREVENTIVE LAW AND PROBLEM SOLVING: LAWYERING FOR THE FUTURE* (2009); LOUIS M. BROWN & EDWARD DAUER, *PLANNING BY LAWYERS: MATERIALS ON A NONADVERSARIAL LEGAL PROCESS* 309 (1978). See also Bruce J. Winick et al., *Preface a New Model for the Practice of Law*, 5 PSYCHOL. PUB. POL'Y & L. 795, 798-99 (1999).

41. Louis M. Brown and other preventive scholars rely on a more developed medical model as an analogy for legal prevention. Just a few of his articles: *Legal Autopsy*, 39 J. AM. JUDICATURE SOC'Y 47 (1955); *Family Lawyer and Preventive Law*, 35 CAL. ST. B.J. 43 (1960); *Preventive Medicine and Preventive Law: An Essay That Belongs to My Heart*, 11 LAW MED. & HEALTH CARE 220 (October 1983). To explore use of symptomatic preventive legal tools such as Protocols for Future Dispute Resolution and Methods to Assure Compliance with negotiated agreements, see Forrest Mosten, *Lawyer as Peacemaker: Building a Successful Practice Without Ever Going to Court*, 43 FAM. L.Q. 389 (2009).

42. This is based on the preventive law maxim that a "file never closes" and when clients leave your office, they should know when lawyer and client will next meet and how the meeting will be arranged and by whom. Parties can anticipate the need for meetings prior to the date the family residence has been scheduled to be sold, when children obtain the age to change schools or begin driving, or when spousal support is set to end so that child support and other issues may need refinement. Similar preventive discussions can follow successful Collaborative Settlement in nonfamily matters.

43. See Sandra M. Rosenbloom & Judith C. Nesburn, *Isn't It Unromantic: Collaboratively Negotiating Pre and Post Nuptial Agreements*, 10 COLLABORATIVE REV. 18 (2008); MOSTEN, *supra* note 4, at 174-76.

44. To support this preventive role, more collaborative professionals will establish client libraries in their offices to offer preventive client education. A client library is a collection of consumer-friendly books, DVDs and videos, audiotapes, brochures, and other resources. It can be the clients' home in the collaborative professional's office in which clients draft their own documents, make private telephone calls to family members or other support persons, or just have a private cry. See MOSTEN, *supra* note 4, at 180-81; FORREST S. MOSTEN, *MEDIATION CAREER GUIDE: A STRATEGIC APPROACH TO BUILDING A SUCCESSFUL PRACTICE* 110-13 (2001).

45. The inner conflict of balancing collaborative and litigative professional lives has been likened to one rider trying to ride two horses at the same time. See NANCY CAMERON, *COLLABORATIVE PRACTICE: DEEPENING THE DIALOGUE* 66, 97 (2004).

46. See *supra* note 28.

47. See Mosten, *supra* note 41.

48. International Academy of Collaborative Professionals, Collaborative Practice Groups, http://www.collaborativepractice.com/_t.asp?M=7&T=PracticeGroups (Last visited Nov. 26, 2010).

49. With more reporting of practice group activity such as the Cypress Practice Group at p. 249 in this issue, such modeling alone will be a catalyst for growth of the field.

50. Proponents of the open membership model stress the nonelitist nature of these groups and believe that opening up membership will enroll more professionals who are eager to learn about collaborative practice. The goal is to create more momentum in the community and generate fresh ideas that improve the practice group as well as attract more membership dues to the practice group treasury. MOSTEN, *supra* note 4, at 109-11.

51. *Id.* at 110-13.

52. The world's leading model and recipient of the 2010 ABA Lawyer as Problem Solver Award for Organizations is the Boston Law Collaborative which offers a variety of services and reports staggering growth, www.BostonLawCollaborative.com (last visited Nov. 26, 2010).

53. See Collaborative Alliance, a floor of offices in Edina, Minnesota, which many different collaborative professionals call home. They share offices and resources but not income. They are also open to work in various models with a variety of professionals. See www.thecollaborativealliance.com (last visited Nov. 26, 2010); MOSTEN, *supra* note 4, at 112-13.

54. TOM PETERS, *THRIVING ON CHAOS: HANDBOOK FOR A MANAGEMENT REVOLUTION* (1987).

55. See John Lande, *An Empirical Analysis of Collaborative Practices*, p. 257 in this issue.

56. I started making predictions for the legal profession in 1972 when Steven Meyers, Len Jacoby, and I opened the first legal clinic in the United States. At that time the Beatles were the rage and we could not fathom what the legal field would look like "when I'm 64." Now that I am 64, I look forward to writing an update on my current predictions in 2030.

Forrest S. Mosten is a collaborative lawyer and mediator who has been in private peacemaking practice in Los Angeles since 1979. He balances his professional time by serving as an adjunct professor of law at UCLA and keynotes conferences and presents trainings worldwide. He is the author of four books and numerous articles in the areas of collaborative practice, mediation, unbundling legal services, building profitable professional practices, expanding legal access, and peacemaking. He is a frequent contributor to Family Court Review (FCR) and this is the third FCR special issue for which he has been guest editor.

Family Lawyers as ADR Facilitators

Tools to Help Achieve and Maintain Neutrality

By Lee A. Schwartz and Carolyn M. Zack



As family lawyers, we practice the art of civil litigation as we would engage in battle. We burnish the armor of our client's cause, shore up weak links with creative theories, root out weaknesses in the opposition's lines of defense and charge ahead to advance our client's objectives. Some of us have been honing these litigation skills for many decades. How, then, do those of us who also act as family law mediators, collaborative lawyers or arbitrators put the brakes on this winner-takes-all mentality and adopt the lens of an independent neutral? As alternative

dispute resolution (ADR) facilitators, we assist participants in achieving a fair and balanced result. Switching roles from advocate to neutral can be a tricky mental adjustment, which is even more challenging when the neutral litigates regularly against other lawyer participants. This article explores the tools that the family lawyer who also serves as a mediator, collaborative lawyer or arbitrator can use to help achieve neutrality and become a more effective and sought-after neutral. It also addresses a recent decision in the Angelina Jolie-Brad Pitt custody case that provides guidance for avoiding challenges to neutrality based on ongoing business and other relationships.



A. MEDIATION

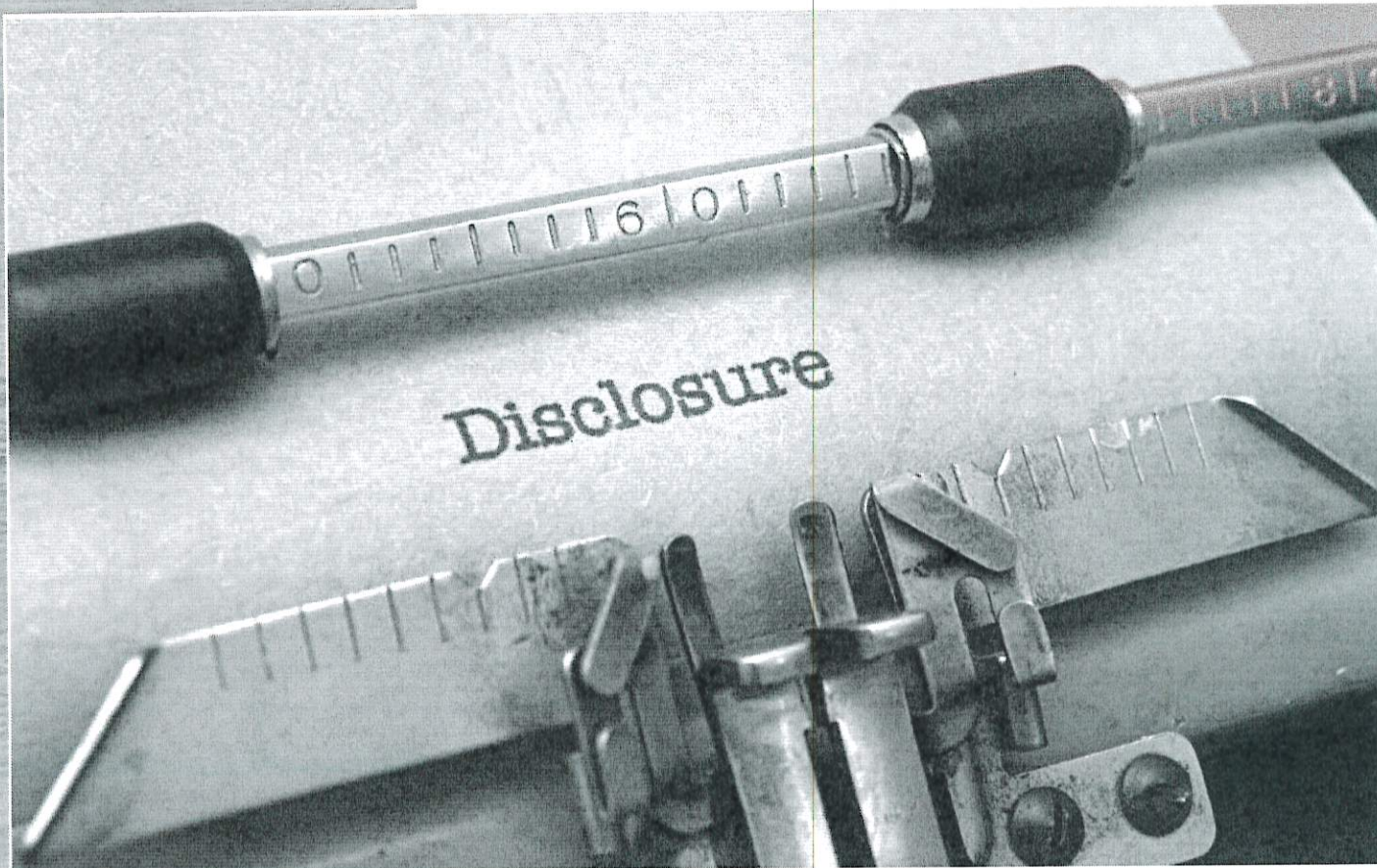
1. Disclosing and Waiving Initial Conflicts

Mediation, effectively, is assisted settlement negotiation. Parties come to a mediator at many different stages of their conflict. Some have the framework of a settlement worked out and want the mediator to draft the agreement to formalize that understanding. Others are “starting from scratch” and have no idea how to resolve their dispute. They have marital property that needs to be divided. They have children, need a custody schedule and a perhaps a support agreement. Other than those broad-brush strokes, they don’t know what

other issues they may need to address. The mediator’s work can be broken down into a series of steps — starting with ensuring that the mediator discloses any personal or financial relationships that may bear on his or her ability to act impartially.

The Pennsylvania Rules of Professional Conduct (RPC) do not specifically require disclosure of conflicts by lawyers acting as neutrals. Instead, RPC 2.4, Comment 2, recognizes that the role of third-party facilitator, evaluator and decision-maker is not unique to lawyers and, in performing this role, the lawyer may be subject to court rules or other laws that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals.

In the absence of rules applied by agreement of the parties or order of court, the mediator should adhere to the highest ethical standards, including the International Institute for Conflict Prevention and Resolution (CPR)’s Model Rule for the Lawyer as Third-Party Neutral, the Model Standards of Conduct of Mediators adopted by the American Bar Association (ABA) and the Association for Conflict Resolution in 2005, and the Standards of Practice for Professional Family Mediators adopted by the Academy of Professional Mediators in 2014. These ethical guidelines require that the mediator conduct the proceedings in an impartial, unbiased and even-handed manner.



Full disclosure of all actual and potential conflicts is important at the outset of the communication with the parties before the mediation agreement is signed and, ideally, ... within the mediation agreement itself.

The CPR Model Rule recommends the most detailed approach to establish impartiality in Section 4.5.3(b):

(1) The mediator-lawyer must disclose to the parties all circumstances, reasonably known to the lawyer, why the lawyer might not be perceived to be impartial. These circumstances include (i) any financial or personal interest in the outcome, (ii) any existing or past financial, business, professional, family or social relationship with any of the parties, including, but not limited to any prior representation of any of the parties, their counsel and witnesses, or service as an ADR neutral for any of the parties, (iii) any other source of bias or prejudice concerning a person or institution which is likely to affect impartiality or which might reasonably create an appearance of partiality or bias, and (iv) any other disclosures required of the lawyer by law or contract.

For the family lawyer considering an assignment as mediator, this disclosure step requires a deep dive not only through the lawyer's client list, but also creation of a

co-counsel/opposing counsel list and an ADR list, which the lawyer can consult as needed. Under the CPR Model Rule, these disclosures extend to the lawyer's immediate family, current employer, partners or business associates, requiring that the lawyer make inquiry of these individuals in creating those lists. Full disclosure of all actual and potential conflicts is important at the outset of the communication with the parties before the mediation agreement is signed and, ideally, should be confirmed within the mediation agreement itself. If the parties and their attorneys, if any, do not waive the conflict, the lawyer should decline the assignment. If the lawyer believes that the connections he or she has with the parties or the subject matter would appear to a reasonable person to preclude a fair and objective outcome, the lawyer should decline the mediation even after the parties expressly consent. The lawyer has a continuing obligation to disclose any new conflicts during the proceedings. The lawyer-mediator's ability to achieve neutrality depends on transparency and commitment to impartiality from the outset.

2. Ongoing Duty of Disclosure

The lawyer-mediator's duty of disclosure does not end with the signing of the mediation agreement. All of the ethical guidelines recommend that after accepting appointment and while serving as a neutral, the lawyer should not enter into any financial, business, professional, family or social relationship or acquire any financial or personal interest that is likely to affect impartiality or that might reasonably create the appearance of partiality or bias without disclosure and consent of all parties. RPC 1.12(a) provides that after the mediation is concluded, the lawyer-mediator shall not subsequently represent any party to the ADR proceeding in the same or a substantially related matter unless all parties consent after full disclosure. RPC 1.12(b) prohibits the lawyer from negotiating for employment with any party or attorney for a party in a matter in which the lawyer participated personally and substantially as a third-party neutral. The CPR Model Rule extends further to preclude a lawyer who has served as a third-party neutral from representing a party adverse to a former ADR party where the lawyer-neutral has acquired confidential information, without the consent of the former ADR party.

These standards preserve the integrity of the mediation process. Before later developing personal or professional relationships with the parties or other participants, the mediator should consider the time elapsed following the mediation, the nature of the relationships established and the services offered to determine whether these relationships may create a real or perceived conflict of interest.

3. Disclosure of Role as Neutral

Pursuant to RPC 2.4(b), a lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the

matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client. The comment to this rule explains that the potential for confusion as to the lawyer-mediator's role is significant, especially for unrepresented parties. The level of explanation may vary depending on the party's prior experience with ADR, but must ensure that the participants understand that the mediator is not an advocate for either party and the attorney-client privilege does not apply in this context.

The mediator should also explain to the participants how the role of mediator differs from other professional roles, such as expert or therapist and, in appropriate cases, encourage the parties to consult such other professionals and obtain advice, representation or treatment. These preliminary disclosures by the mediator and informed, written waivers of any actual or potential conflicts by the parties and their counsel pave the way for an eyes-wide-open proceeding where all participants are and perceive themselves to be on an even playing field.

4. Compartmentalizing the Attorney in Us All

As litigators, we have been trained to act in a certain way. We direct our clients toward the best result for them; we provide seasoned legal and practical advice to them each step along the litigation path; we identify weaknesses in the other side's case and we suggest solutions. Mediation is totally different. Not all attorneys are good mediators. There are several bright-line rules that help the mediator move away from that attorney mindset toward neutrality.

a. Not Providing Legal Advice

This is one of the more difficult habits for a litigator to overcome. The mediator should encourage each party to have his or her own attorney. Separate representation for each party avoids the inevitable prob-



The lawyer-mediator's ability to achieve neutrality depends on transparency and commitment to impartiality from the outset.

lem of a party asking the mediator for legal advice that the mediator may not provide. The mediator providing legal advice to one party is unethical and inappropriate. By having their own legal "sounding board," the parties are much better supported through the process.

b. Not Advocating for a Result

Again, this is a difficult habit to break. We have been trained as litigators to advocate on behalf of a party and to get the "best" result as we perceive it. The goal of mediation is to allow the parties to achieve their own resolution, which may or may not be "fair" in the eyes of the mediator. There is a huge difference in advocating for a client rather than advocating for a successful resolution tailored to the individual needs and objectives of the parties.

c. Using Caucus Prudently

Mediators have a tool called caucus to assist a party who is stuck on a position to find options for a resolution acceptable by the other party. The mediator seeks to avoid impasse or termination of the media-

The lawyer-mediator's duty of disclosure does not end with the signing of the mediation agreement.

There are several bright-line rules that help the mediator move away from [the] attorney mindset toward neutrality.



tion process. In doing so, the mediator must avoid the appearance of aiding one party to the detriment of the other party. The mediator should explain to both parties the potential benefit of the caucus and use the caucus sparingly, without advocating for a specific result.

B. COLLABORATIVE LAW

Collaborative law is another means of reaching a nonlitigation result. Collaborative practice is a blend of ADR methods, including mediation aspects, together with parties having their own lawyer to represent them and that lawyer being “in the room” during the collaborative process. Collaborative lawyers are specially trained in the collaborative process. Along with collaboratively trained lawyers, there can be collaboratively trained mental health professionals, financial experts, real estate professionals, mortgage professionals and other professionals.

Once retained, the two lawyers will communicate and put together a “team” of professionals to assist in the process. At times, the team can be made up of just the two lawyers. Sometimes, a party needs

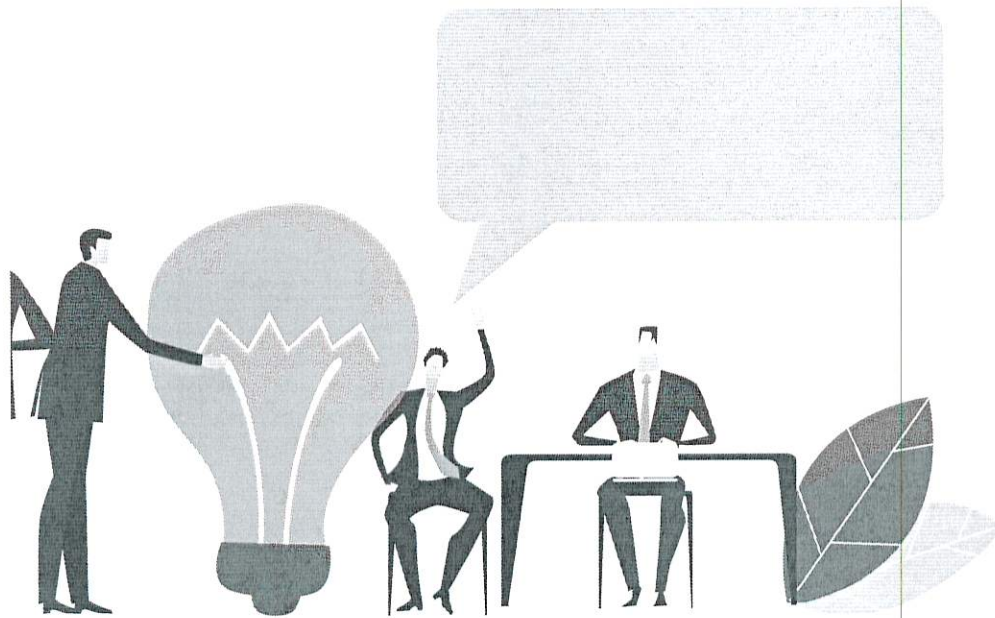
mental health support in the process, so a trained mental health professional will be on the team. In other cases, a party was not involved in financial decisions during the marriage, or the party has a business or complicated financial holdings, so someone who has financial expertise will also be a part of the team.

The main challenges to collaborative lawyers are:

1. Moving Away From Being “Result Oriented” to Being “Goal Oriented”

The biggest challenge to a collaborative lawyer is to avoid suggesting results early in the process rather than inquiring about the goals of the participants. Traditional representation is, by its nature, results-oriented, i.e., “How can I get the best result for my client?”

In the first team meeting, the parties are asked to identify their short- and long-term goals; the collaborative lawyer should not raise how to achieve those individual goals. By working together to identify and satisfy the parties’ mutual goals, the team helps the parties to achieve results by compro-



mise. In collaborative practice, we are looking for a resolution that meets the needs of the family as a unit.

2. Sharing Knowledge Between Parties and Counsel

For the collaborative process to work, the lawyers need to assist the parties in providing complete disclosure and honesty, even if disclosure is not in one party's best interest. Conversely, traditional litigation may result in some parties or lawyers "hiding the ball." This includes keeping information from the other party if that information is not required to be disclosed by law and hasn't been requested by the other party.

3. Not Threatening Litigation

In traditional litigation, an attorney might threaten to file a motion or take other legal action if a party is not agreeing with his or her client's position on a topic. That type of conduct is strictly forbidden in collaborative practice. If a party is not agreeing to the other party's position, the next step is to find another solution that will meet the party's goals. If one party refuses to cooperate or the parties mutually decide

to terminate the process, then the lawyers withdraw from the representation and the parties must start afresh with new counsel in litigation.

C. ARBITRATION

1. Establishing and Maintaining Impartiality

Many of the same duties to establish impartiality in mediation apply to family law arbitration, including: (1) disclosing and waiving initial conflicts, (2) ongoing duty of disclosure and (3) disclosure of the attorney's role as neutral. The importance of the arbitrator's role in making disclosures to maintain neutrality was recently illustrated in the Angelina Jolie-Brad Pitt custody case, *Jolie v. Superior Ct. of Los Angeles Cty.*, No. B308958, 2021 WL 3123763 (Cal. Ct. App. July 23, 2021). The Second Appellate District Court of Appeal of California disqualified a private judge the parties retained in their custody matter for failing to sufficiently disclose business relationships with Pitt's attorneys.

The Court of Appeal found that grounds for disqualification existed under the state's

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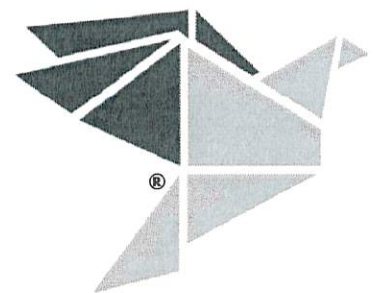
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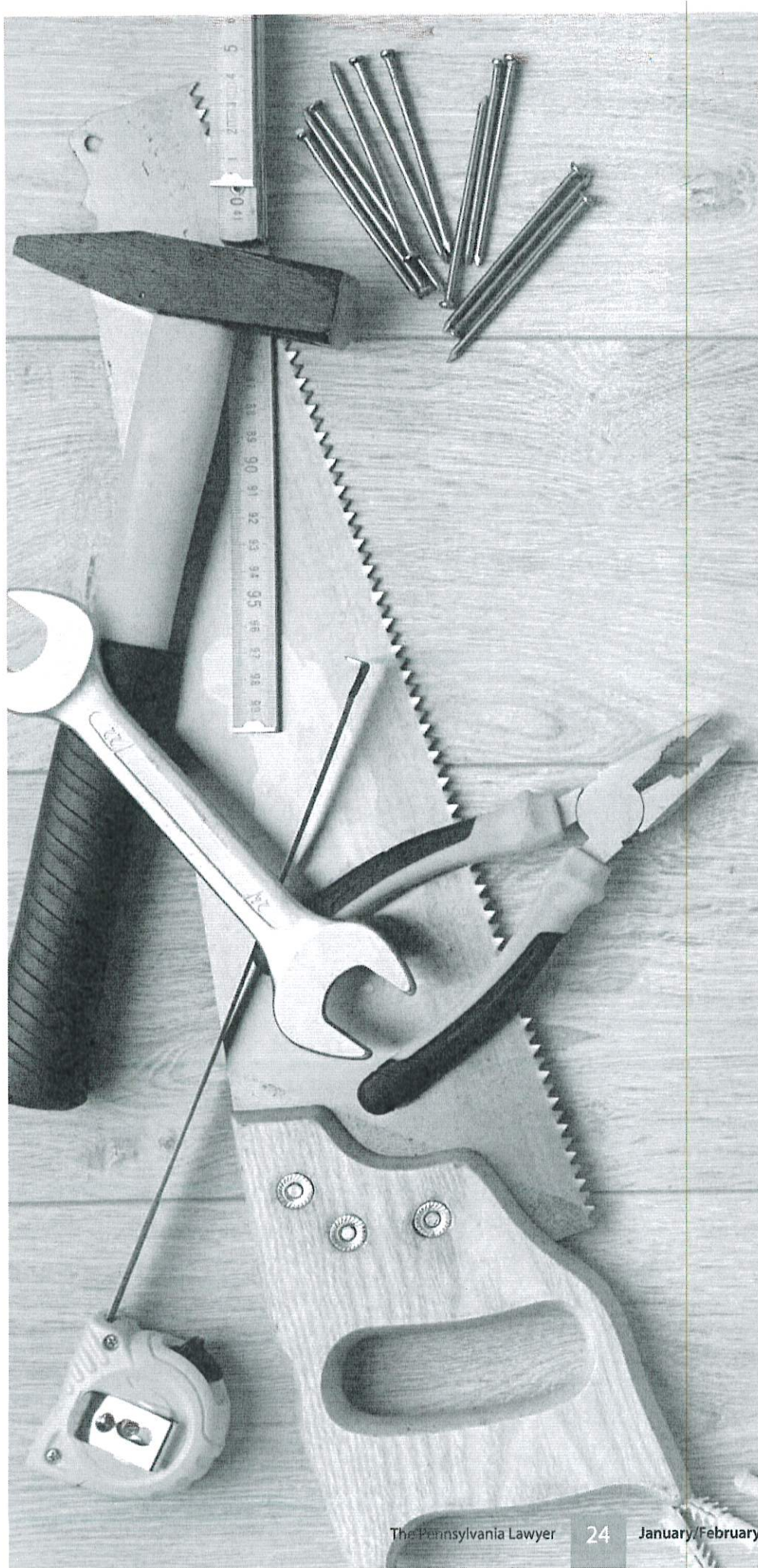
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Code of Judicial Ethics, which required the private judge to disclose facts that may cause a person to “reasonably entertain a doubt that the ... judge would be able to be impartial.” In that case, the Court of Appeal concluded that the private judge’s involvement in two previously undisclosed matters involving Pitt’s counsel — “thereby renewing and expanding a relationship with lawyers who had in the past attained the status of significant repeat-players” — coupled with the private judge’s failure to voluntarily disclose these matters to Jolie and her new lawyer (who had no prior professional relationship with this judge) could cause a “person on the street” to reasonably entertain a doubt as to the judge’s “ability, consciously or unconsciously, to remain impartial in the upcoming, hotly contested custody dispute.” While the Court of Appeal’s decision is based on the state’s ethical rules applicable to judges, the same result could easily apply in a private arbitration matter in which an arbitrator fails to disclose relationships with the parties’ counsel or their law firms, or new such relationships that develop during the proceedings. For these reasons, the CPR Model Rule 4.5.4(1)(4) recommends that where the circumstances might reasonably create the appearance that the neutral had been influenced in the ADR process by the anticipation or expectation of a subsequent relationship or interest, a lawyer who has served as a third-party neutral shall not subsequently acquire an interest in or represent a party to the ADR proceeding in a substantially unrelated matter for a period of one year or other reasonable period of time under the circumstances, unless all parties consent after full disclosure.

2. Ensuring Fairness and Integrity of the Process

Since the arbitrator will render a final, binding decision on important issues, the lawyer-arbitrator must strive to ensure that the process is fair. Pennsylvania’s Revised Uniform Arbitration Act, which applies to all agreements to arbitrate executed as of July 1, 2019, 42 Pa.C.S.A. Section 7321 et

seq., provides the basic requirements for due process. The CPR Model Rule and the Code of Ethics for Arbitrators in Commercial Disputes approved by the American Arbitration Association and the ABA in 2004 offer additional ethical guidelines that help the lawyer-arbitrator achieve and maintain neutrality, including:

- a. The arbitrator shall decide all matters justly, using independent judgment and not permitting outside pressure to affect the decision.
- b. The arbitrator shall maintain the confidentiality of information acquired during the course of the arbitration.
- c. The arbitrator shall treat all parties with fairness and respect and freedom from bias or favoritism.
- d. The arbitrator shall not communicate ex parte with a party except to obtain general information about the case to determine the suitability of the appointment.
- e. The arbitrator shall make reasonable efforts to prevent delay tactics, harassment of the parties or other participants, or other abuse or disruption of the process.

These standards help to reinforce arbitration as a fair and reliable method of dispute resolution by preventing harm to the parties and promoting the public's perception of the legitimacy of the process.

CONCLUSION

The family lawyer who undertakes the role of third-party neutral in a mediation, collaborative law or arbitration matter provides a valuable service for parties who seek to resolve their family law disputes outside of the court system. By helping the parties implement their chosen ADR method, the lawyer is facilitating a resolution that is much faster than going to court, is far less expensive than litigation and results in an agreement or award both parties "own." With that result, it is far more likely that

the parties will comply with their responsibilities. Before accepting this role, family lawyers should sharpen their tools to achieve and maintain neutrality, including understanding the role of the neutral in the specific ADR process, compartmentalizing the duties attendant to that role and adhering to the highest ethical standards. By using these tools throughout the process, family lawyers can effectively "switch hats" from advocates to neutrals, improve their success in resolving disputes fairly and gain recognition as dedicated and impartial ADR facilitators. ☒




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Carolyn M. Zack served as a family court hearing officer in the Chester County Court of Common Pleas, where she also presided over equitable distribution matters, for eight years. She joined the firm of Momjian Anderer LLC five years ago, where she practices family law, and acts as an arbitrator, mediator and parenting coordinator. Carolyn authored the book, *Family Law Arbitration: Practice, Procedure and Forms*, published by the ABA in August 2020. See <https://www.americanbar.org/products/inv/book/402949740/>. She can be reached at 267-546-3712 or czack@momjiananderer.com.

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