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Collaborative Law Practice: An Unbundled Approach to Informed Client Decision Making

Forrest S. Mosten

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I. INTRODUCTION

Collaborative Law practice is an innovative client-centered form of law that has evolved from the concepts of mediation and unbundling legal services. Unbundling is also known as "limited scope," "legal coaching," or "discrete task representation." The ability of attorneys to limit the scope of our services based upon written informed decision making (i.e., consent) of the client is a mainstay of both unbundled client coaching of pro se litigants and of Collaborative attorneys. In Collaborative Law, this is embodied in the disqualification agreement, which prohibits all the attorneys from representing their clients in court if a Collaborative engagement terminates short of settlement.[1] As both a mediator and Collaborative practitioner, I am delighted to see the values of client empowerment and control find a home in the Collaborative movement.

After growing and uninterrupted acceptance and use of Collaborative Practice since its inception by Stu Webb of Minneapolis in 1990, the February 2006 Colorado Ethical Opinion 115 finding Collaborative Law to be unethical per se was a

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1. Informed Consent and Informed Decision making are closely related yet different concepts. I prefer the concept of "decision-making" as proposed by veteran Collaborative Lawyer, George Richardson as broader and more crucial for client action. (Comment on the Yahoo Collaborative Listserv on January 28, 2008, cited with permission from George Richardson.)

Client consent, on the other hand, presumes that the client has agreed to sign off on certain deal points or substantive rights. *See* John Lande, *How Will Lawyering and Mediation Practices Transform Each Other?*, 24 FLA. ST. U. L. REV. 839, 857-79 (1997) (recommending a process for identification and analysis of appropriate options to promote "high-quality consent"); John Lande, *Toward More Sophisticated Mediation Theory*, 2000 J. DISP. RESOL. 321, 325 n.25 (suggesting the term quality "decision-making" rather than "consent").

As this article focuses on the process for decision-making, and no deal may ever be made, I give informed decision-making the slight nod. However, since recent ethical opinions, as discussed below, dwell on Client Informed Consent, much if not most of my article applies to this concept as well.

setback to Collaborative attorneys worldwide. However, in August 2007, the American Bar Association affirmed Collaborative Law as an ethical practice of law[2] on the condition that the limitation of scope of the attorney's role is a product of written informed consent of the client.

In addition to giving the Collaborative movement a deserved reprieve from the setback of the Colorado opinion, the 2007 ABA Ethical Opinion created an opportunity for Collaborative practitioners to further reflect and develop our approach to providing competent and comprehensive informed decision making to our clients in selecting a process. This article is intended to explore the commonality of the development of informed decision making/consent for unbundled legal services and Collaborative Law utilizing the unbundled approach of bifurcating the attorney role between advisor and provider to give clients a full and balanced education of the process of Collaborative Law, the various models of Collaborative Practice available, and to help the client make an informed decision prior to commencing a Collaborative Law engagement.

II. EVOLUTION OF COLLABORATIVE LAW PRACTICE FROM BOTH MEDIATION AND UNBUNDLED SERVICES

At its core, Collaborative Law has its roots in mediation in promoting joint problem solving without adversarial representation and in unbundling in both its veneration of client empowerment and its limitation of scope of representation to eliminate court representation by the attorneys engaged to provide Collaborative service.[3]

A. Collaborative Law's Debt to Mediation

Collaborative Law adopts the following aspects of mediation:

Party Decision Making: Rather than delegating decision-making responsibility to attorneys, parties are in charge of determining both the process and ultimate terms of the resolution.[4]

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2. See Professor Scott Peppet's eloquent article in this issue in respect to the question as to whether the ABA Opinion provides blue sky in respect to the ethical issues raised in Collaborative Law Practice. Scott R. Peppet, *The Ethics of Collaborative Law*, 2008 J. DISP. RESOL. 133.

3. The International Academy of Collaborative Professionals (IACP) website, http://www.collaborativepractice.com/_FAQs.asp?FAQ=4, states the following: "Collaborative Practice is by definition a non-adversarial approach. Your lawyers pledge in writing not to go to court. They negotiate in good faith, and work together with you to achieve mutual settlement outside the courts. Collaborative Practice eases the emotional strains of a breakup, and protects the well-being of children." *Id.*

4. Some mediators (particularly who practice in a more evaluative style) contend that a bifurcation of decision-making exists: the mediator controls the process while the parties control ultimate decision-making. My experience has taught me that process and decision-making are entwined and affect each other. Moreover, in my trainings, I explicitly stress that parties have ultimate control of the process: choice of mediator, parties at the table, venue, agenda, timing, etc. I often use the following analogy: "Mediation can be seen like a football game where all the players meet on the fifty yard line, select which person will serve as referee, decide how many players will be on the field, how many downs each team will have, and how many yards will constitute a first down." All of these decisions must be made by unanimous consensus. Of course, if the players spend all their time "mediating" the

Direct Communication: In mediation, parties often have the opportunity to speak directly with each other instead of using attorneys as the primary channel of communication. Mediation offers the opportunity for parties to learn improved communication skills for the current dispute and future interactions.

Negotiation Coaching: Mediators often help participants learn negotiation strategy and techniques to effectively communicate and reach agreements.

Flexible Process: Mediation is very flexible and can be tailored to each case by varying procedures such as joint and private sessions, use of experts, and the role of parties' attorneys.

B. Collaborative Law's Debt to Unbundling

Collaborative Law is an unbundled legal service due to its limitation of scope. Every Collaborative attorney who signs a Participation Agreement that includes a litigation disqualification clause is limiting the scope of the legal services offered to that client.

Unbundling is defined as:

"The client is in charge of selecting one or several discrete lawyering tasks contained within the full-service package."[5]

The client specifically provides for:

1. Extent of services provided by attorney
2. Depth of services provided by attorney
3. Communication and decision control between client and attorney[6]

The limitation of legal services based on informed consent and a written agreement is permitted in every state and in many Western countries.[7] Every initial consultation with an attorney that goes no further is a form of an unbundled service: the professional has more services to offer and often either the client chooses or cannot afford the "full service package" offered by the professional. "Second opinions" are classic unbundled services: the attorney limits his scope to review and comment on the work of another professional but does no more. When an attorney writes or ghostwrites a single letter at a client's request, and the

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rules, the game may never get played. Therefore, pre-session "process" agreements and the use of templates and default processes in many situations help parties actually get started.

5. FORREST S. MOSTEN, UNBUNDLING LEGAL SERVICES: A GUIDE TO DELIVERING LEGAL SERVICES A LA CARTE 1 (2000).

6. *Id.* at 2.

7. *See* MODEL RULES OF PROF'L CONDUCT R. 1.2 (c) (2007): "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent." For a state by state review of unbundling activity, see "Unbundled" Legal Services, http://www.unbundledlaw.org/States/states.htm. For Australia and Canada see: *Submission on Current Legal Aid and Justice Arrangements*, AUSTRALIAN LAW REFORM COMMISSION n.10 (2003) (discussing the importance as well as referencing the use of unbundling in Ontario, Canada), *available at* http://www.alrc.gov.au/submissions/ALRCsubs/2003/0819.htm. For unbundling in England, see Suzanne M. Burn, Unbundling Dispute Resolution Services: The Missing Link in Access to Civil Justice? (1998) (unpublished dissertation).

client handles the rest of the job, the attorney drafting the letter is a, limited and unbundled service.[8]

In addition to the fact that both unbundling and Collaborative Law limit scope of services, there are other similarities. Unbundling is based on a power-sharing between attorney and client as to how to handle the case and who will do the work. Also, unbundling and Collaborative Law both underscore client empowerment as the basis for these forms of legal services. Finally, clients use both unbundling and Collaborative attorneys if they want legal help that will embrace peacemaking and non-adversarial approaches.[9]

However, there are differences between Collaborative Law and unbundling:

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8. Therefore, unbundling and limitation of scope already widely takes place because very few clients want or can afford the full service package.

What makes modern unbundling so unique is that clients either expect or are *proactively* informed and educated about the option of unbundling. Similarly, the lawyer *proactively* offers a single client or a client population an explicit choice to utilize limited services and takes advantage of many institutional and ethical protections providing the lawyer the security to offer these services without being unreasonably sued or disciplined for doing so.

Unbundling the full package into discrete affordable tasks is not just a theory. It is operating in law offices worldwide.

There are numerous replicable models of lawyers successfully unbundling their services to increase legal access. Unbundling can be either vertical or horizontal. Vertical unbundling is breaking up the lawyer role into a number of limited services, each service or a combination of services available for sale. Horizontal unbundling is the limitation of lawyer involvement to a single issue (spousal support) or combination of issues (child custody and property excluding retirement rights).

Examples of vertical discrete task representation include the following:

Advice: If a client wants advice only, it can be purchased at an initial consultation or throughout the case as determined by the client with input from the lawyer. The lawyer and client collaborate in helping the client decide if and when further consultations may be needed.

Research: If a client wants legal research, a personal or telephonic unbundled service provides this legal information. Research may take as little as fifteen minutes or as much as ten hours. The client is in charge of determining the scope of the job and who will do the work: the lawyer, client, or a negotiated Collaborative effort between the two.

Drafting: Lawyers ghostwrite letters and court pleadings for the client to transmit—or just review and comment on what the client has prepared.

Negotiation: Lawyers teach clients how to negotiate with opposing parties, court clerks, and governmental agencies.

Court Appearances: If a client desires, an unbundled lawyer can convert to full representation for court appearances, hearings, and mediation. The lawyer and the client agree upon discrete tasks.

In horizontal unbundling, the lawyer may be engaged for the issue of spousal support only, and the client will either represent himself and/or engage another representative for all other issues. In the same way, a lawyer might represent a client in a hearing on single temporary child custody hearing, but the client will represent herself at subsequent hearings on child custody or at trial on all issues. Lawyer and client are in charge of determining the scope of representation, and in jurisdictions that provide protections and comfort for lawyers who unbundle, the court and other party are required to respect the lawyer-client decision. For example, in Florida, the other (non-unbundling party) is permitted to communicate directly with a party who has engaged an unbundled attorney if the unbundling client and unbundling attorney have this arrangement as part of the scope of representation. In California, lawyers who ghostwrite pleadings for self-represented parties are not required to disclose their involvement in the pleadings filed in court. CAL. R. OF CT. 5.70.

9. While some unbundling lawyers help their clients take adversarial positions within their limited scope engagement, one of the benefits of unbundled legal services is the opportunity for self-represented parties to learn about the existence of mediation and other dispute resolution options and how to use these options. *See generally* BRUCE D. SALES, CONNIE J. BECK & RICHARD K. HAAN, SELF-REPRESENTATION IN DIVORCE CASES (1993); and MOSTEN, *supra* note 5.

While Collaborative attorneys who sign the court disqualification agreement do not go to court, for the rest of the lawyering services[10] attorneys generally are "full service" by performing work rather than having their clients do it.

The essence of unbundling is "coaching" clients to handle matters themselves. Collaborative attorneys serve as full representatives/advocates for their clients within the non-adversarial Collaborative Guidelines and Principles—in many ways, the attorneys drive the process far more than self-represented parties being helped with unbundling.

Unbundling is an innovative legal service option to extend legal access to people who cannot afford attorneys or do not want to otherwise use attorneys. While there are some efforts to provide Collaborative Law to middle income and working poor families,[11] to date, most users of Collaborative Law have been better educated and higher income families. Compared to litigation, lower legal fees are touted as a benefit of Collaborative Law. However, Collaborative attorneys stress the non-adversarial resolution and benefits to the parties and children rather than cost savings compared to traditional attorney-attorney negotiation. Likewise, compared to mediation, Collaborative attorneys stress client comfort and protection of having their attorneys active and present, and cost savings plays a smaller role. When full Collaborative teams are involved, discussion of cost savings almost disappears compared to a more interdisciplinary and comprehensive solution focus.

A major challenge also exists in that unbundling attorneys and Collaborative attorneys often view themselves in different worlds and in my experience, don't pay much attention to the developments outside of their own orientation. Unbundling attorneys currently see themselves as friends of the unrepresented litigants and agents of expanded legal access by increasing affordability. Collaborative attorneys see themselves as more enlightened family attorneys who focus on agreement making with major attorney involvement outside of the adversarial court system.[12] These two legal service cousins have much in common and much more to learn from each other which hopefully will be on the agenda for both lawyering approaches.

III. INFORMED CONSENT IS THE MORTAR FOR LIMITATION OF SCOPE OF LEGAL SERVICES INVOLVED IN COLLABORATIVE LAW

The use of Collaborative Law depends on the legitimacy of its limitation of scope of legal services. Probably the most succinct definition of Collaborative Law and its origins is included in the 2007 ABA Formal Opinion 07-447 legitimizing Collaborative Law as an ethical model for the practice of law[13] :

10. See the description of discrete lawyering services in Footnote 8.

11. Fred Glassman, President of the Los Angeles Collaborative Family Law Association has initiated a project to make Collaborative Law available to middle income and working poor families by offering affordable flat fees and meeting parties on weekends and evenings to avoid missed work time.

12. I fully understand that these conclusions are based on my own experience and research should be undertaken to test my views.

13. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 07-447 (2007). The Judicial Council of California adopted Rule 5.70, Nondisclosure of Attorney Assistance in Preparation of Court Documents. This agency of the court promulgates Court Rules and state-wide standardized court forms.

> Collaborative law is a type of alternative dispute resolution in which the parties and their lawyers commit to work cooperatively to reach a settlement. It had its roots in, and shares many attributes of, the mediation process. Participants focus on the interests of both clients, gather sufficient information to insure that decisions are made with full knowledge, develop a full range of options, and then choose options that best meet the needs of the parties. The parties structure a mutually acceptable written resolution of all issues without court involvement. The product of the process is then submitted to the court as a final decree. The structure creates a problem-solving atmosphere with a focus on interest-based negotiation and client empowerment.
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> Since its creation in Minnesota in 1990, collaborative practice has spread rapidly throughout the United States and into Canada, Australia, and Western Europe . . . .
>
> Although there are several models of collaborative practice, all of them share the same core elements that are set out in a contract between the clients and their lawyers (often referred to as a "four-way" agreement). In that agreement, the parties commit to negotiating a mutually acceptable settlement without court intervention, to engaging in open communication and information sharing, and to creating shared solutions that meet the needs of both clients. To ensure the commitment of the lawyers to the collaborative process, the four-way agreement also includes a requirement that, if the process breaks down, the lawyers will withdraw from representing their respective clients and will not handle any subsequent court proceedings.[14]

14. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 07-447, at 1-2.

IV. THE 2007 ABA OPINION ON COLLABORATIVE LAW OPENS UP A MAJOR ISSUE NOT ONLY FOR COLLABORATIVE PRACTITIONERS, BUT FOR ATTORNEYS WHO ENGAGE IN TRADITIONAL FULL SCOPE REPRESENTATION[15]

Following a solid line of authority requiring informed consent prior to limiting scope of representation,[16] ABA Formal Opinion 07-447 relies on ABA Model Rule 1.2(c) which states: "An Attorney may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."[17] The Opinion conditions the right of an attorney to engage in Collaborative representation with the *duty* to "advise the client of the benefits and risks of participation in the process."[18] The opinion states:

> Rule 1.2(c) permits an Attorney to limit the scope of a representation so long as the limitation is *reasonable* under the circumstances and the client gives informed consent. Nothing in the Rule or its Comment sug-

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15. The Full Service Lawyering Package is still the primary model used by lawyers and preferred by clients. Following the emerging duty to inform clients regarding options to mediation, commentators have suggested that before filing court pleadings as counsel of record, a lawyer has a duty to inform the client about the option of unbundling and compare and contrast full service and unbundling regarding the benefits and costs to the client. *See* the following information found in Forrest S. Mosten, *Unbundling and Expansion of Legal Access*, Indiana State Bar Continuing Legal Education Unbundling Seminar Materials, Oct. 2006:

In a client consultation prior to the execution of a traditional attorney-client retainer agreement, A Lawyer should:

- Disclose unbundling as an option to full service representation
- Compare and contrast unbundling and full service in respect to:
  - Overall result
  - Cost
  - Relationships
  - Speed of resolution
  - Control
  - Ability of client to self-represent
- Ability of the client to engage lawyer on one basis and modify the arrangement later.

Id.

16. For a review of unbundling statutes, cases, ethical opinions, and secondary sources, see http://www.unbundledlaw.org.

17. MODEL RULES OF PROF'L CONDUCT R. 1.2(c) (2007).

18. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 07-447, at 1 (emphasis removed).. *See also* American Bar Association Model Rules of Prof'l Conduct:

Rule 1.0(e) defines "informed consent" as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."

Rule 1.4(b) states, "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

Rule 1.7 states, "(a) . . . a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: . . . (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to . . . a third person. . . . (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: . . . (4) each affected client gives informed consent, confirmed in writing."

> gest that limiting a representation to a Collaborative effort to reach a settlement is per se unreasonable. On the contrary, Comment [6] provides that "[a] limited representation may be appropriate because the client has limited objectives for the representation. *In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives.*"[19]

Obtaining the client's informed consent requires that the attorney communicate adequate information and explanation about the material risks of and reasonably available alternatives to the limited representation. The Attorney must provide adequate information about the rules or contractual terms governing the Collaborative process, its advantages and disadvantages, and the alternatives. The attorney also must assure that the client understands that, if the Collaborative Law procedure does not result in settlement of the dispute and litigation is the only recourse, the Collaborative attorney must withdraw and the parties must retain new attorneys to prepare the matter for trial.

Informed consent has long been required for limited scope representation. In affirming unbundling in 1998, the Colorado State Bar clearly required attorneys to obtain informed consent when coaching pro se litigants:

> THE scope or objectives or both, of the lawyer's representation of the client may be limited if the client consents after consultation with the lawyer . . . . When a lawyer is providing limited representation to a pro se party as permitted by CRCP 11b or 311b, the consultation with the client shall include an explanation of the risks and benefits of such limited representation.[20]

V. ETHICAL DUTY TO OBTAIN CLIENT INFORMED CONSENT BEFORE PROVIDING COLLABORATIVE REPRESENTATION

This article proposes that the duty to obtain a client's informed consent applies in a number of ways in that before commencing a Collaborative Law engagement,[21] an attorney has an ethical duty to:

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19. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 07-447, at 3 (emphasis added). Comment 6 to Model Rule 1.2 reads in full:

> The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

MODEL RULES OF PROF'L CONDUCT R. 1.2 Comment 6 (2007).

20. COLO. RULES OF PROF'L CONDUCT OLD R. 1.2 Comment (1993).

21. The detailed steps of my proposal is consistent with the argument of Professor Julie MacFarlane who states in her article in this issue: "Offering clients a single option or course of action and asking them to 'Decide' is not authentic shared decision making, whether this is rights based adjudication or Collaborative Law."

- Fully explain the concept of Collaborative Law;
- Compare full service representation including court representation with Collaborative representation;
- Compare Collaborative representation with the use of mediation and how mediation and Collaborative Law can be used in the same matter;
- Fully explain the model(s) of Collaborative Law that the attorney practices and to compare the benefits and risks of each model; and,
- Fully explain the alternate models of Collaborative Law not offered by the attorney and to compare the benefits and risks of such alternate models and appropriate situations; to offer to make appropriate referrals to other attorneys in the community who offer such alternate models. [22]

VI. THE DUTY TO INFORM ABOUT COLLABORATIVE LAW: PRACTICE IMPLICATIONS

An emerging duty to inform a client before initiating litigation currently exists in respect to the options to litigation. Similar duties have been promulgated to increase the use of mediation[23] and unbundled legal coaching services for pro se litigants.[24] The California Judicial Council's endorsement and development of court forms have been instrumental in the growth and use of unbundling in that state.[25] In 2005, the Family Law Sections and the courts of Santa Clara and Los

22. For a fascinating discussion of Informed Consent for Mediation that I believe is equally applicable to Collaborative Representation, see a special edition of Dispute Resolution Magazine entitled, *Perspectives on Consent in Mediation*, 14 DISP. RESOL. MAG., Winter 2008, at 2 (ABA Section on Dispute Resolution, special issue). Particularly illuminating is the lead article by Professor Jacqueline Nolan-Haley in which she states: "Consent promotes fairness and enhances human dignity, and it is linked to durability and sustainability in negotiated agreements." Jacqueline Nolan-Haley, *Consent in Meditaion*, 14 DISP. RESOL. MAG. 2, Winter 2008, at 4. Professor Frank Sander echoes this theme when he argues: "Knowing Consent requires not only buy-in to the method(s) used but also signoff others that might be." Frank Sander, *Achieving Meaningful Threshold Consent to Mediator Style(s)*, 14 DISP. RESOL. MAG., Winter 2008, at 10.

23. The Duty for Mediation: *See* Marshall J. Breger, *Should an Attorney Be Required to Advise a Client of ADR Options?*, 13 GEO. J. LEGAL ETHICS 427 (2000). *See also The Lawyer as a Dispute Resolution Manager: The Ethical Duty to Advise Clients About Alternatives to Litigation,*, *in* FORREST S. MOSTEN, COMPLETE GUIDE TO MEDIATION (1997).

24. *See generally* MOSTEN, *supra* note 5; Frank Sander and Michael Prigoff, *Professional Responsibility: Should There Be a Duty to Advise About ADR Options? No, an Unreasonable Burden*, 76 A.B.A. J. 50 (1990); Robert Cochran Jr, *Legal Representation and the Next Steps Toward Client Control: Attorney Malpractice for the Failure to Allow the Client to Control Negotiation and Pursue Alternatives to Litigation*, 47 WASH. & LEE L. REV. 819 (1990). The Duty for Unbundling: *See* FORREST S. MOSTEN, UNBUNDLING LEGAL SERVICES (2000), and Forrest S. Mosten, *Unbundling Legal Services to Help Divorcing Families*, in INNOVATIONS IN FAMILY LAW PRACTICE (Forrest S. Mosten, ed., forthcoming 2008).

25. See Form FL-950 of California Judicial Council, Notice of Scope of Limited Representation, *available at* http://www.courtinfo.ca.gov/forms/fillable/fl950.pdf. The American Bar Association Standing Committee on Delivery of Legal Services (William Hornsby, Staff Counsel) has played a similar supportive role in promoting unbundling for the past fifteen years.

Angeles formally endorsed unbundling.[26] In 2007, similar endorsements have occurred for Collaborative Law in California[27] and Australia.[28] To further enhance the duty to inform, Los Angeles Superior Court Judge Aviva Bobb, former Presiding Judge of the Family Law Department, now sends a letter to all self-represented litigants to inform them of mediation and Collaborative Law.[29]

Competent client counseling requires that attorneys compare unbundling and Collaborative Law to full-service lawyering by focusing on a range of criteria including satisfaction of the client's interests, effect on important relationships, client control over the process and result, and the cost and speed of the process.[30]

In fulfilling their duty to obtain their clients' informed consent about Collaborative representation in practice, attorneys may take some or all of the following steps:

- Describe their own model(s) of Collaborative Practice in their brochures, websites, or other marketing materials;
- Provide books, videos/DVD's, and other educational resources for clients in their waiting rooms and client libraries;[31]
- Provide the client with a written copy of the aspirational Collaborative Law Pledge[32] and go over it with the client at the first client consultation;

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26. See Forrest S Mosten, "Representing Your Clients in Mediation" 2007, Los Angeles County Bar Family Law Symposium, Appendix 1.

27. Effective January 1, 2007, California Family Code § 2013 recognizes Collaborative Law process as an alternative dispute resolution process. CAL. FAM. CODE §2013 (West 2006), *available at* http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fam&group=02001-03000&file=2010-2013. Los Angeles County Superior Court Rule 14.26 provides for Collaborative Law. L.A. SUPER. CT. R. 14.26, *available at* http://www.lasuperiorcourt.org/courtrules/Chapter14.htm#14.26.

28. "COLLABORATIVE LAW is beginning to take off in Australia with the backing of the Family Law Council, federal Attorney-General Philip Ruddock, and the Chief Justice of the Family Court Diana Bryant." Clare Buttner, *A Better Way to Divorce,* LAWYERS WEEKLY ONLINE, Mar. 13, 2007, http://www.lawyersweekly.com.au/articles/A-better-way-to-divorce_z69305.htm.

29. *See* Forrest S. Mosten, *The Potential of the Family Law Education Reform Project for Family Lawyers*, 45 FAMILY CT. REV. 5, 9 n.10 (2007).

30. *See* Chapter 6: *The Lawyer as a Dispute Resolution Manager: The Ethical Duty to Advise Clients About Alternatives to Litigation, in* FORREST S. MOSTEN, THE COMPLETE GUIDE TO MEDIATION (1997).

31. *See id.* at 79-81; FORREST S. MOSTEN, MEDIATION CAREER GUIDE 110-113 (2001); and description and photo of a client library at http://www.mostenmediation.com/legal/library.html. *See also*, Forrest S. Mosten, *Mediation and the Process of Family Law Reform*, 37:4 FAM. AND CONCILIATION CTS. REV. 429 (1999). The world's most sophisticated client library is housed at the Sydney, Australia public library Legal Information Access Center http://www.liac.sl.nsw.gov.au. To promote legal information in non-profit institutions to inform clients about mediation and Collaborative Law, the Southern California Mediation Association has established a Conflict Resolution Library Project and Fund. *See* http://www.scmediation.org/western_justice_center_library.asp.

32. The Dispute Resolution Section of the Beverly Hills Bar Association, International Institute for Conflict Prevention & Resolution (CPR) in New York, and the Better Business Bureau have all used aspirational pledges to encourage their members to use mediation. This model can be used to encourage Collaborative Law as well. In a recent presentation to the Los Angeles Collaborative Family Law Association, I proposed the following aspirational Pledge:

Lawyer should disclose and competently discuss:

- Disclose chosen model of CL with adversarial representation, and other non-adversarial models dispute resolution (including other models of CL)
- Compare and contrast CL in respect to:

Overall result

- Inform clients about available dispute resolution options[33] including variations of the Collaborative Law models;[34] set out the Collaborative Model selected by the client in the attorney-client agreement and in the four-way Participation Agreement;[35]
- Affirm the client's understanding of the foreseeable benefits and risks of the limited scope of representation, both orally and in the client-attorney retainer agreement or letter.[36]

Cost
Relationships
Speed of resolution
Control
Ability and willingness of client to engage in CL

- Ability of the client to engage lawyer on one model and modify the arrangement later
- Voluntary pledge to unbundle—this duty becomes Standard of Care of informed client contract
- I believe that clients are entitled to be informed about (a) comparison of the costs of litigation, adversarial representation, other models of Primary Dispute Resolution, and other models of CL with the costs of my model of CL; (b) creative remedies not available in the court system; (c) time and privacy considerations; (d) comparison of potential results of litigation and other models of CL ; (e) preventive methods to avoid future disputes and maximize the client's overall quality of life.
- I have read the International Association of Collaborative Professionals (IACP) brochure, "Collaborative Law and its Alternatives." I shall have this brochure or similar ADR handouts available and shall give such handouts to clients early in the attorney-client relationship where appropriate.
- I pledge that I will discuss CL, Mediation, and other PDR options with my clients and opposing counsel and recommend its use in appropriate situations.

33. Such non-adversarial models include, but are not limited to client self solutions, party-party negotiation, lawyer-lawyer negotiation, traditional four-way meetings, and various models of mediation.

34. To help clients make truly informed decisions, lawyers should include descriptions of processes and models that they do not offer or recommend.

The above pledge is an aspirational commitment by a lawyer that clients may find helpful in choosing a lawyer and obtaining information to make good decisions. This pledge can be translated into client handouts to explain the pledge, what the *client should know and do to make the best decisions possible. It is my hope that such client materials will be developed by individual lawyers and Collaborative Law organizations.*

35. Sample Participation Agreements can be found at http://www.collaborativepractice.com.

36. The following is a sample limited scope clause that the I use in my law practice in which I ***never*** represent clients in court:

SERVICES TO BE PERFORMED

CLIENT hereby engages Collaborative attorney to provide all legal services reasonably required to represent CLIENT in connection with the MATTER (hereinafter called the "MATTER"), described on the first page of this Agreement. Under no circumstances will Collaborative Attorney represent CLIENT in any court appearances or adversarial proceedings of any kind. CLIENT agrees that this refusal by Collaborative attorney to participate in court appearances is best for my case and is in my financial best interest. I understand that if the other party initiates an adversarial proceeding and/or I believe that it is in my interest to file an adversarial proceeding, CLIENT acknowledges that additional fees may be necessary to engage a litigator and for services by FORREST S. MOSTEN to effectuate such transition of representation. Upon mutual agreement, FORREST S. MOSTEN will make a Limited Scope (unbundled) Appearance in a court action for the sole purpose of filing initial pleadings (Petition or Response) and/or to file a Stipulation or Judgment containing agreements reached by the parties. Upon mutual agreement, if a litigator is engaged, CLIENT may continue to engage FORREST S. MOSTEN to provide legal services to with CLIENT and the litigator to manage the litigation and to enhance settlement opportunities

Good lawyering practice also might call for a discussion of future dispute resolution options (after the current dispute is settled) and preventive approaches to avoid future conflict and maximize a client's legal health and other future life opportunities. However, these important future oriented approaches are beyond the five-point proposal of this article.[37]

VII. PRACTICAL ADVICE FOR OBTAINING CLIENTS' INFORMED CONSENT EXPLANATION OF THE COLLABORATIVE LAW PROCESS GENERALLY

The client is entitled to be informed, at a minimum, of the essential goals and characteristics of this innovative and emerging form of practice. This explanation of Collaborative representation should occur in the very first client meeting.[38]

While fully explained elsewhere, some key characteristics of Collaborative Law include:[39]

- Clients and attorneys all sign on to a set of Guidelines and Principles that provide for respectful communication, commitment to the healing of the family, use of interest based negotiation,[40] and exploration

37. *See* the prolific work of Louis M.Brown and Edward A. Dauer, most specifically, PLANNING BY LAWYERS: MATERIALS ON A NONADVERSARIAL LEGAL PROCESS (1978). *See also Chapter 19: Preventing Future Conflict, in* MOSTEN, COMPLETE GUIDE TO MEDIATION (1997).

California Western Law School has a program of Creative Problem Solving.

38. Lawyer training in the art of client interviewing and counseling has undergone a revolution in the past thirty years, largely due to impetus of the seminal work by David Binder, Paul B. Bergman, and Susan Price: LAWYERS AS COUNSELORS: A CLIENT CENTERED APPROACH (2d ed. St. Paul: West Publishing 2004) (1991). Based on this process model, the Collaborative practitioner can integrate the substance of Collaborative Law from a variety of sources, including PAULINE TESLER & PEGGY THOMPSON, COLLABORATIVE DIVORCE: THE REVOLUTIONARY NEW WAY TO RESTRUCTURE YOUR FAMILY, RESOLVE LEGAL ISSUES, AND MOVE ON WITH YOUR LIFE (2006). A variety of videos explaining the basics of Collaborative Law are now available including a free link by Gary Direnfeld, a Toronto Social Worker, http://www.yoursocialworker.com/videos/CFL-direnfeld.wmv. For a detailed set of criteria used to train law students in client counseling world-wide, see the Assessment Criteria of Louis M. Brown International Client Counseling Competition at http://www.usyd.edu.au/lec/ICCC2007/rules.shtml. The Criteria include:

establishing an effective professional relationship; obtaining information; learning the client's goals, expectations and needs; problem analysis; legal analysis and giving advice; developing reasoned courses of action (options); assisting the client to make an informed choice; effectively concluding the interview; teamwork of legal counselors; handling ethical and moral issues; post interview reflection period between the lawyer counselors

39. For a more comprehensive explanation, see TESLER & THOMPSON, *supra* note 38. (2006); and SHEILA GUTTERMAN, COLLABORATIVE LAW: A NEW MODEL FOR DISPUTE RESOLUTION (2004).

40. The Must-read Negotiation Books for your Client Library are:

- ROGER FISHER, WILLIAM URY, BRUCE PATTON, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (1991).
- JEFFREY KRIVIS, IMPROVISATIONAL NEGOTIATION: A MEDIATOR'S STORIES OF CONFLICT ABOUT LOVE, MONEY, ANGER—AND THE STRATEGIES THAT RESOLVED THEM (2006).
- ROY LEWICKI, ESSENTIALS OF NEGOTIATION (2004).
- BERNARD MAYER, THE DYNAMICS OF CONFLICT RESOLUTION: A PRACTITIONER'S GUIDE (2000).
- JULIE MCFARLANE ET AL., DISPUTE RESOLUTION: READINGS AND CASE STUDIES (1999)
- RETHINKING DISPUTES: THE MEDIATION ALTERNATIVE (Julie Macfarlane, ed., 1997).

of mutually agreeable solutions rather than threats or use of leverage and power;

- Clients and attorneys all sign a Participation Agreement that includes, at a minimum, an incorporation of the Collaborative Guidelines and Principles as well as a Court Disqualification Clause. If the matter does not resolve within the Collaborative process, neither attorney will represent his client in any litigation. The purpose of this clause is to maximize motivation of the parties and attorneys to reach a settlement;[41]
- Collaborative professionals have specialized training in Collaborative divorce skills and strategies and are committed to providing interdisciplinary assistance, particularly with divorce coaches for emotional, relationship, and parenting issues as well as financial professionals for valuation, budgeting, and tax issues;[42]
- Parties are seen as the key players as well as decision makers: direct communication between the parties and discussions outside the legal parameters is encouraged;
- Parties are bound by voluntary commitment to fully disclose assets and not to conceal other important relevant information;
- Attorneys and parties are committed to refrain from threatening or taking court action;[43]
- As in mediation and settlement discussions generally, communications within Collaborative meetings and documents prepared for the Collaborative process are confidential and inadmissible in court;[44]
- Many jurisdictions give Collaborative cases priority within the court system such as in processing of judgments/decrees, access to the presiding judge, or a tolling of requirements for status conference or assignment to a trial court.[45]

▪ CHRISTOPHER MOORE, THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT (1996).

▪ ROBERT H. MNOOKIN, BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES (2000).

▪ AUSTIN SARAT & WILLIAM L.F. FELSTINER, DIVORCE LAWYERS AND THEIR CLIENTS (1995).

41. As indicated in Professor John Lande's article in this issue, some "Cooperative" lawyers adhere to the Collaborative Principles and Guidelines without the execution of a Litigation Disqualification Clause. John Lande, *Practical Insights From an Empirical Study of Cooperative Lawyers in Wisconsin*, 2008 J. DISP. RESOL. 205.

42. A number of models exist for unbundling the Collaborative professionals. Some Collaborative lawyers work with coaches and financial experts for each party from their own closed panel or Collaborative Practice group, some Collaborative lawyers draft neutral or party aligned professionals as needed from a variety of sources, and other lawyers work primarily without interdisciplinary professionals.

43. A major issue exists whether parties or Collaborative professionals should be able to consult with litigators or take steps to prepare for court action during the pendency of a Collaborative matter. If such consultation does not violate Collaborative principles, a further issue exists as to whether disclosure of such consultations is required or expected.

44. *See generally* Uniform Mediation Act; *see also* CAL. EVID. CODE §§ 1115-1129.

45. As illustration only, the Los Angeles Superior Court Family Law Department provides all of these procedural advantages for cases in which a Collaborative Stipulation is signed by parties and

The chart found in the Appendix (or similar client educational tool) should be given to and discussed with clients when they consider the possibility of Collaborative representation. It is intended to identify the most important considerations, but it is not exhaustive. Discussions with clients should be tailored to the clients' individual circumstances and should consider advantages and disadvantages of all the relevant process options available.

VIII. COMPARE FULL SERVICE REPRESENTATION INCLUDING COURT REPRESENTATION WITH COLLABORATIVE REPRESENTATION

Compared to full service representation, Collaborative Law is generally better in meeting the criteria of enhancing privacy, speed of resolution, control of the parties, saving and improving relationships, and reducing cost. If the findings of the 1994 ABA Comprehensive Legal Needs Study hold true today,[46] client satisfaction with the process and with their attorneys will be extremely high due to one variable: the parties stay out of court more frequently. In the ABA Study, investigators found that generally, clients who resolved their matters consensually out of court found their attorneys to be trustworthy, honest, credible, competent, helpful, and effective. Once parties and their attorneys walk up the courthouse steps with attendant cost, lack of privacy, incessant delays, polarizing positions affecting relationships, and lack of control over result, clients blame attorneys and are generally negative and dissatisfied with both the justice system and their attorneys.

IX. COMPARISON OF COLLABORATIVE LAW WITH OTHER DISPUTE RESOLUTION PROCESSES COMPARE COLLABORATIVE REPRESENTATION WITH THE USE OF MEDIATION AND HOW MEDIATION AND COLLABORATIVE LAW CAN BE USED IN THE SAME MATTER

Before starting a Collaborative engagement, a client should be informed about how mediation could be used either without attorneys present or with a neutral mediator and attorneys present at the mediation session. This is particularly important since Professor Julie McFarlane has reported that many Collaborative attorneys do not discuss mediation before the client signs a retainer or participation agreement.[47]

Although many Collaborative professionals are also practicing mediators, many Collaborative attorneys do not have other mediation/conflict resolution training or experience. While many Collaborative attorneys prefer the Collaborative model and would like to practice exclusively as Collaborative professionals, the current reality is that most Collaborative professionals also serve as traditional full service practitioners who use the law and the adversary model as guideposts

counsel. To see a copy of the "model" Collaborative Court Stipulation for Los Angeles County, see http://www.lacfla.com/members/index.php?login=true.

46. American Bar Association, Comprehensive Legal Needs Study (1994).

47. *See generally* JULIE MACFARLANE, THE EMERGING PHENOMENON OF COLLABORATIVE FAMILY LAW (CFL): A QUALITATIVE STUDY OF CFL CASES 43, Canada 2005, *available at* http://canada.justice.gc.ca/eng/pi/pad-rpad/rep-rap/2005_1/2005_1.pdf.

both inside and outside the courthouse.[48] Before signing the Collaborative engagement agreement or four-way participation agreement, clients should be advised about the availability of mediation, its various models, and its benefits in comparison to or in conjunction with Collaborative Law. At minimum, a client should be advised:

- Mediation requires a minimum of only one professional, which can affect cost, logistical ease, and may minimize conflicting agendas and personalities;
- Parties speak directly, often without their attorneys present;
- Mediators have many different styles and approaches, including the possibility of interdisciplinary co-mediation;
- Mediation has been the subject of extensive research and increased acceptance and institutionalization due to its relative age in the professional marketplace; and,
- Collaboratively trained professionals make excellent consultants and resources for parties in mediation.[49]

In many ways, mediation and Collaborative Practice are symbiotically linked. Many litigants want to use mediation but also want the advice and protection of an attorney who would both be "mediation-friendly/supportive" and affordable. Mediation and Collaborative professionals can intersect in a case in at least six different ways.

A. Advise Clients About Mediation at Initial Consultation; Compare and Contrast with Collaborative Law[50]

This practice suggests that the attorney should present information about mediation[51] regardless as to the motivation of the client in seeking a consultation.

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48. In a seminal article, Professor John Lande labels mediation controlled by lawyers as liti-mediation—lawyers using the law and their legal culture to dominate the process. John Lande, *How Will Lawyering and Mediation Practice Transform Each other*, 24 FLA. ST. U. L. REV. 839 (1997). Over 30 years ago, Mnookin and Kornhauser described legal negotiators as "bargaining in the shadow of the law." Robert H. Mnookin and Lewis Kornhauser, *Bargaining in the Shadow of the Law*, 88 Yale L. J. 950-997 (April 1979). So whether they are negotiating or advocating in court, the non-mediator lawyers of the Collaborative movement, while not untouched by their Collaborative training, often remain traditional lawyers in Collaborative clothing during their Collaborative engagements. To remedy this problem, many Collaborative Practice groups and the IACP are encouraging mediation training and the use of mediation as within Collaborative engagements and immediate referral to mediators in appropriate cases. *See, e.g.*, Fred Glassman, *MediCollab*, 9:1 COLLAB. REV., Spring 2007, at 30.

49. I am proud to be a participating Collaborative attorney of my practice group, Los Angles Collaborative Family Law Association (LACFLA) and our international organization, International Academy of Collaborative Professionals (IACP). I have found that many clients engaged in mediation seeking consulting professionals look at Collaborative Law sites to find "mediation-friendly" professionals. As a mediator, I recommend these sites as a primary resource for mediation parties to find consultants

50. In a 2008 Collaborative Law Advanced Training, Pauline Tesler provided a chart that visually makes this comparison. I use this chart daily in my office.

51. In addition to verbally discussing mediation in the client consultation, an attorney can provide mediation information in the form of handouts, brochures, films, or even referral to a mediator. Efforts

Some clients consult the attorney because the client wants to explore or just start the Collaborative process. By discussing mediation, some Collaborative attorneys might believe that they would be talking themselves out of a job. As shall be discussed below, even if the client chooses to opt for mediation rather than having two Collaborative attorneys, clients can benefit from the skills and services of an Collaborative attorney to help them through a mediation.[52]

B. Unbundled Advice for Clients Outside Sessions for Court Mediation

When clients consult an attorney for Collaborative representation, they are not aware that one available option is for the attorneys to be *outside* the room while a neutral mediator works with the parties. These attorneys can play a supportive, educational, and collaborative role in helping their clients "win"—which in mediation and Collaborative Law means reaching an agreement that they can *live* with. Being a "coach" (with whistle and clipboard) for clients before and after sessions to provide legal advice, financial reality, emotional support, practical suggestions, and creative ideas can make the difference between continued conflict and agreements reached during the mediation sessions.

C. Review and Draft Agreements and Further Negotiate for Clients Outside of Mediation Sessions

As many family mediations have sequential sessions that permit the parties to meet over weeks or months, attorneys can review letters, temporary agreements, memoranda of understanding, settlement agreements, and court judgments and decrees. These reviews are very helpful in improving the drafting but more importantly, to help parties understand the benefits and costs of agreements made and to possibly fill in unresolved issues and/or provide ideas and an approach to renegotiate if necessary. Without mediation-friendly and Collaborative attorneys who "let it go," many agreements reached in principle may never be finalized.[53]

D. Collaborative Representation at Mediation Sessions

Many clients need or just prefer to have attorneys with them in mediation sessions. Collaborative attorneys often serve as associate mediators so that three professionals serving different roles can work together toward resolutions opposed to the model in which the mediator referees between attorneys who might be ad-

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at generic public education in Maryland and other states about mediation facilitate this orientation about mediation.

52. This discussion about mediation must be geared to reality. Some clients might have already tried mediation that did not conclude in an agreement. While such clients may know about mediation from their experiences, the attorney might discuss the possibility of other mediators with different mediation styles, gender, or format, including having attorneys involved (as shall be discussed). In other situations, a client's negative experience with mediation may need to merely be acknowledged before the attorney focuses attention on other process options.

53. *See Setting Up the Mediation*, *in* MOSTEN, *supra* note 30, at 225.

versarial in both the positions of their clients and personal issues between counsel.[54]

E. Initiate the Collaborative Process with a Mediator Present at the Beginning of the Process

Some clients want the Collaborative attorneys to structure the process but believe that they are not being protected if the attorneys reach across the table to play both mediative roles as well as meet the needs of their parties. Having a neutral mediator at the outset alleviates some of this client concern. By setting a neutral and safe atmosphere, the mediator can contribute to the work of the Collaborative professionals in helping to prevent impasse.

F. Bring in Mediator If Problems or Impasse Develops or If Collaborative Process is Suspended or Terminated

Often, the Collaborative attorneys/teams are able to reach agreement without the help of a mediator. However, rather than terminate the Collaborative process and head for litigation, mediation can be the logical next step to keep the parties away from the courthouse.[55]

X. EXPLANATION OF THE ATTORNEY'S PRACTICE AND PHILOSOPHY FULLY EXPLAIN THE MODEL(S) OF COLLABORATIVE LAW THAT THE ATTORNEY PRACTICES AND COMPARE THE BENEFITS AND RISKS OF EACH MODEL

In my mediation course at UCLA School of Law, one of the biggest challenges for students is counseling a client on selecting the appropriate mediator after comparing the different styles[56] of mediation. The task becomes even more difficult given that the client is not totally in charge of the ultimate choice of mediator since the other party(ies) must also agree on the selection of the mediator.

The same is true in contracting for Collaborative Law services. The client is entitled to understand the landscape of possible options for Collaborative repre-

54. Mediators offer several models for counsel participation and the roles of lawyers once in session. Some mediators will not mediate with unrepresented clients, some mediators will not permit lawyers in session, and others defer to client decision-making as to participation of lawyers. In the same way, once in session, there are three basic roles of counsel: parties are primary participants with lawyers as resources, lawyers as primary participants with clients as resources, and clients and lawyers as both full participants.

55. Recent discussion on the Collaborative List Serve reveals a consensus among Collaborative Practitioners that participation by Collaborative lawyers in a mediation is not a violation of the Disqualification Stipulation. *See* Collablaw@Yahoogroups.com.

56. *See* Leonard L. Riskin, *Who Decides What: Rethinking the Grid of Mediator Orientations*, DISP. RESOL. MAG., Winter 2003, at 10. I use Professor Riskin's brilliant and courageous article (he reflects on and accepts critiques of his Grid published in 1994 and 1996 and modifies his approach) in not just anchoring the mediator selection decision but also helping students' frame interventions (moves) throughout the mediation process.

sentation,[57] to be informed as to which model(s) the attorney offers, and how each model might be impacted by the model of lawyering selected by the other party.

The role of the attorney conducting such informed consent consultation is in a difficult—almost a conflict of interest—position. The attorney is both an *advisor* as to choice of model and a *provider* of the model(s) offered by that attorney. The attorney should at least disclose to the client this self-interest in encouraging the client to choose the advising attorney as service provider as well as to help the client make the most informed choice. Perhaps the attorney could consider "unbundling" the roles of advisor and provider so that the client gets maximum independent advice.[58]

XI. DISCUSS THE RANGE OF COLLABORATIVE MODELS INVOLVING CLIENT AND THE OTHER PARTY'S CHOICES

Before a client starts a Collaborative engagement, an attorney should discuss the range of possible models he/she provides as well as the models of representation that the other party might employ. The client should be informed about the existence of each of the following Collaborative and Non-Collaborative Models and the advantages and disadvantages of each model. The client should also be fully informed that the client's choice of model might or might not be reciprocally selected by the other party.

As an illustration, the client may select Model 3 (Full Collaborative Team) and Party 2 may also choose Model 3. On the other hand, Party 2 may select Models 1-2, or 4-8, a hybrid of various models or a new model altogether. Such a decision by Party 2 may result in the client making a number of possible decisions in consultation with the attorney, or sometimes the client may make a decision without such consultation (or in consultation with *another* attorney).

Some choices that the client may have include: Unilaterally modifying the initial model to match the model selected by Party 2; negotiating with Party 2 (with or without counsel) to select a mutually acceptable model of lawyering; and

57. In the field, there is still vigorous discussion as to whether any model of lawyering that does not include the disqualification stipulation may be called "Collaborative." Many scholars and practitioners argue that calling "Cooperative Lawyering" (see article in this issue by John Lande) or other models not including the disqualification stipulation "Collaborative" is confusing to the consumer and is destructive to the "branding of "Collaborative Law" that has been so carefully marketed since 1990. I am respectful of this approach that favors a more expansive view of Collaborative lawyering beyond the model espoused by many Collaborative Law practitioners. As a writer who is also interested in development of self-sustaining profitable practices to grow the field and provide a stable inventory of lawyers who practice non-traditional lawyering, I believe that using the word "Collaborative" for a number of different models that share the no-court commitment by lawyers is helpful to the consumer. In the same way that the different models of mediation can fill several pages but that they are all mediation and the consumer begins to think "mediation," a general use of the word "Collaborative" will make this important area of practice more acceptable and less risky for lawyers and new practitioners to try (and benefit from).

58. Very few lawyers perform this unbundling of roles. An example of such "unbundling" of advisor and provider roles is played by Brian Burke of Santa Barbara, California who acts as educator and counselor with individuals and couples for a flat fee. After describing process options and possible providers to one or both parties, Burke will not actually represent clients or perform the mediation itself. *See* MOSTEN, *supra* note 5, at 114-15. Most other Collaborative practitioners and I live with conflict, many of us disclose it, and serve in both the advisor and provider roles with each client.

changing attorneys to adopt the same or different model as selected by Party 2. Such attorney change may be because the advising attorney does not offer a model now selected by the client or that the client (with or without input from the advising attorney) believes that another attorney can better represent the client in the selected model.[59]

Before discussing the various Collaborative Models, the following variables should be considered as to each option:

1. *Parties' Decision*: Have parties reached an agreement as to the Model/process of their negotiation prior to meeting with their attorneys? If so, a respect and deference to a decision of the parties should be demonstrated by the attorney.
2. *CL Training*: Are attorney(s) trained in CL? As indicated previously, if the advising attorney or other party's attorney is trained in Collaborative Law (and hopefully also in mediation and advanced conflict resolution strategies), even an apparently "less Collaborative" model might be modulated and opportunities for resolution maximized.
3. *Willing to Litigate in Other Matters*: Are attorney(s) "no court attorney(s)?" or do they litigate in non-CL? If the advising attorney or other party's attorney do not litigate, it might signify a deeper commitment and skills to collaboration and resolution. If either attorney does litigate, such attorney might have a more current knowledge of sitting judicial officers and court procedures.
4. *Willing to Litigate in this matter*: Are attorney(s) willing to serve as litigation counsel if no settlement is reached in this case? If a party is particularly concerned about the cost and/or disruption or risk of hiring a new attorney, this variable might be important. Other clients find "no litigation" counsel important because such attorneys may have less financial incentive to have the matter go to litigation: if the negotiation process terminates, a "no-litigation" attorney is out of a job.
5. *Which Party Hires an Attorney First*: Has the other party already selected an attorney, or will the attorney model decision be in response to client's decision? The consultation can focus solely on the choice of model by the client and how that model will affect the client given a choice of model in place by the other party.

Every Collaborative advising attorney model includes the commitment of the advising attorney's willingness to sign a Participation Agreement that includes a Court Disqualification Clause. Collaborative Models differ as follows:[60]

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59. If the other party selects a lawyer who immediately files a court action, if the Advising lawyer is a no-court lawyer in all situations (as I am) the decision to change (or add) attorney is simple. If the advising lawyer also litigates and/or is comfortable offering models 5-7, the client decision as to selection of lawyer is more complex and nuanced.

60. Each of the following models includes the possibility that the other party will choose to self-represent totally or to engage an unbundled attorney to advise in the background with the other party attending handling the negotiations directly with the advising attorney and client. While it is possible

Model 1: *Collaborative Attorney is Independent—Not Part of Collaborative Team.* Collaborative attorneys negotiate directly with each other and the parties independently of other Collaborative mental health and financial professionals. Attorneys might refer client to experts individually or engage joint neutral experts. Advantage: Cost may be reduced and communication and scheduling may be simplified. Disadvantage: Input from important experts may not be obtained and it may be primarily an attorney driven process.

Model 2: *Collaborative Attorney Represents Clients Alone, Adding Members of the Collaborative Team as Needed.* Same as Model 1 except that each Collaborative attorney may choose to add other professionals to the team. Advantage: Provides same advantages of Model 1 plus the flexibility and added perspective of other interdisciplinary team members. Disadvantage: Attorneys rather than the full team make decisions as to composition of the team and timing of inclusion of other professionals. Client may not have beneficial input from expert coaches from the outset.

Model 3: *Collaborative Attorney is an Equal Member of a Full Collaborative Team From the Outset.* All members of the Collaborative team are co-equal participants in the design of process, interaction with the client, and determination of advice and strategy in representing the client. Team members consult and collaboratively plan with team members of the other party. Advantage: Client has benefit of legal, emotional, and financial advice to make best decisions and takes most collaborative and efficient steps in resolving matter on a deeper and more satisfying level. Disadvantage: May be more costly, logistically difficult, and include possible communication difficulties between team members or differences in approach that can cause confusion for the client.

The following models are not seen as "Collaborative" in that they do not include signing a four way Participation Agreement that includes a Litigation Disqualification Clause. However, attorneys should discuss these models as options for the client and possibilities for adoption by Party 2.

Model 4: *Cooperative Law Attorney is Not Willing to Sign a Four-Way Participation Agreement that Includes a Litigation Disqualification Clause but is Willing to Sign a Participation Agreement.* The attorney will follow Collaborative Guidelines and Principles. Advantage: Negotiations will follow the amicable, interest based, and voluntary disclosure based Guidelines and Principles. If negotiations terminate and court representation is needed, client has established relationship and continual representation. Client might feel protected and empowered with added

for the client to opt to self-represent as well, for the purposes of this discussion, it will be assumed that the client will be engaging an attorney for one of the models discussed. *See generally* MOSTEN, *supra* note 5.

leverage if litigator is same attorney as negotiator. Disadvantage: Commitment of attorneys and parties to collaboratively resolve might be diluted, and the imminent possibility of court action might affect the atmosphere of negotiations and accelerate use of the litigation option.

Model 5: *Non-Collaborative Good Faith Negotiation in Non-Court Setting Refraining from Threats of Litigation.* Attorney is not willing to sign a four-way Participation Agreement that includes a Litigation Disqualification Clause, is not willing to follow Collaborative Guidelines and Principles, but is willing to negotiate in good faith toward a non litigation resolution without threats or taking imminent litigation steps. Advantage: Willingness of Party 2 to negotiate without threats might result in a settlement even if Collaborative principles are not utilized. Disadvantage: Client utilizing Collaborative approach might feel or actually be at a leverage disadvantage.

Model 6: *Non Collaborative Good Faith Negotiation in Non-Court Setting with Actual Threats of Court Action.* Attorney is not willing to sign a four-way Participation Agreement that includes a Litigation Disqualification Clause, is not willing to follow Collaborative Guidelines and Principles, but is willing to negotiate in good faith toward a non litigation resolution with threats of seeking a court determination in some or all issues if client's requests/demands are not met. Advantage: Negotiation is conducted closer to "the Shadow of the Law,"[61] and unproductive and costly negotiation has a shorter leash if it is not apparently leading to a resolution in the interest of the client. Disadvantage: Threats can lead to counter threats that can lead to escalation of conflict and preemptive or unnecessary litigation. Threats also often blind parties to exploring solutions of common interest that may lead to resolution.

Model 7: *Non-Collaborative Negotiation by Other Side with Litigation Ongoing—Client Utilizes Collaborative Attorney Joined by Litigation Attorney for Client.* Attorney for the other side is not willing to sign a four-way Participation Agreement that includes a Litigation Disqualification Clause, is not willing to follow Collaborative Guidelines and Principles, but is willing to negotiate in good faith toward a litigation resolution while litigation is pending with threats of seeking a court determination in some or all issues if client's requests/demands are not met. Advantage: Negotiation is conducted in "the Shadow of the Law,"[62] and unproductive and costly negotiation has a shorter leash as an imminent court determination might resolve some issues if resolution is not successful. Client will be protected by litigation counsel with Collaborative attorney remaining the lead counsel with the mission to continue to utilize Collaborative principles whenever possible in order to give resolution a "last clear chance" before litigation further continues and escalates.

61. Mnookin & Kornhauser, *supra* note 48, at 986.
62. *Id.*

Even after litigation motions or hearings are filed, most matters still settle without a judicial officer actually making a ruling, and the presence of Collaborative counsel can increase the possibilities of ending litigation sooner. Disadvantage: Now that both parties have litigation counsel and the matter is actually in litigation the Collaborative voice may be seen as ineffective or irrelevant given the litigation realities. The Collaborative attorney may defer or give up Collaborative approaches given the litigation approaches of the other attorneys (and perhaps the parties). Also, attorney fees increase for the client due to two attorneys both providing services so that the Collaborative attorney's bill may be seen as duplicative and/or contrary to the litigation strategy of co-counsel.

XII. ATTORNEY SHOULD INFORM CLIENT ABOUT AVAILABILITY OF OTHER MODELS OF COLLABORATIVE PRACTICE

Assessment of whether mediation is appropriate for the parties and whether unbundling is appropriate for the client has been widely discussed.[63] The major risks and concerns being addressed by such discussion are lack of capacity, imbalance of power of parties, and vulnerability of a party or client without an attorney being present. Since Collaborative Practice assumes that clients will have attorneys at their side while agreements are being negotiated, concerns about client harm are vastly reduced.

However, the focus of assessment of appropriate models of Collaborative Practice should shift to concern about what model of lawyering the *other* party might utilize. Just as Leonard Riskin found use of mediator orientation to be *situational* depending on the different parties, different issues, and different stages of mediation,[64] the risks of Collaborative Practice are *situational* depending on *how* the matter is initiated and the model of lawyering utilized by the other party.

The basic model of Collaborative Law (requiring trained professionals and signed Disqualification Agreement) generally is the safest model for the client. This model normally produces the highest motivation for settlement and the most protection for the client if the matter does not settle and litigation ensues.

However, the other party must agree to a Collaborative Law Model. Therefore, if the parties have chosen the basic Collaborative Law option *or* the other party has already engaged a trained Collaborative attorney before the client comes in for an assessment conference, the need for further assessment or disclosure of other models is reduced. The following discussion focuses on the need for assessment and disclosure when an attorney counsels the client before it is ascertained which model of lawyering the other party will utilize.

Many clients may be concerned (or should be) about having to hire a second attorney if the basic Collaborative Law process terminates without an agreement.[65]

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63. *See* Model Standards of Practice for Family and Divorce Mediation, http://www.abanet.org/family/reports/mediation.pdf, Standard III and MOSTEN, *supra* note 5, at 24-28, 49.

64. *See generally* Riskin, *supra* note 56.

65. Mediation research has shown a high rate of success and satisfaction with the process. *See generally* CONNIE J.A. BECK AND BRUCE D. SALES, FAMILY MEDIATION (2001). Research is needed to

For this reason, even if an attorney practices solely in the basic Collaborative Law Model, this risk and the attendant costs of hiring a second attorney should be raised. Information about Cooperative attorneys or other Collaboratively trained attorneys should be offered to a client *even* if the basic Collaborative Law model has been previously chosen by the parties.

If the other party has already selected an attorney who is untrained, unwilling to sign the disqualification agreement, or who has threatened or taken court action, the duty to inform becomes even more important. Rather than summarily rejecting a Collaborative Law approach, due to a negative assessment of the other party or attorney, even if the advisor attorney refuses to participate in that case according to Collaborative Guidelines and Principles, the advisor attorney should inform the client of other collaboratively trained attorneys in the community who might participate along with the benefits and risks of doing so. If the advisor attorney does not know of collaboratively trained attorneys who might take on the engagement, the advisor can either make a diligent search or coach the client how to make such a search on his own. In such allocation of tasks between attorney and still unrepresented client, the potential Collaborative attorney converts to an unbundled coach, and the symbiosis between unbundling and Collaborative representation comes full circle.

XIII. QUESTIONS THE ATTORNEY SHOULD DISCUSS WITH CLIENTS CONSIDERING COLLABORATIVE REPRESENTATION

Regardless of the Collaborative model(s) the advising attorney utilizes, the client is entitled to know some information about that attorney.

A. Is the Attorney a Member of a Collaborative Practice Group? If So, What is the Nature of That Group?

The Academy of Collaborative Professionals (IACP) lists the practice groups that have registered with that organization.[66] The public can access the existence and membership of these groups. Practice groups (PODS) are organizations composed of attorneys, mental health professionals, and financial professionals within a geographical community who practice solely or in part in the Collaborative orientation. PODS differ as to membership/training requirements and model of Collaborative Practice. Some Collaborative PODS are open to anyone—others are closed and require voting and vetting by existing members. Some practice groups are more informational in nature, and others organize and market their model(s) of Collaborative Practice within their community and even track the cases by member to monitor progress and assure that members are utilizing other professionals within their group and that all members are being invited to partici-

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study the effectiveness of the Collaborative approach generally, and specifically, the Basic Collaborative Law Model.

66. The Academy of Collaborative Professionals, http://collaborativepractice.com/_t.asp?M=7&MS=3&T=PracticeGroups&J=Y (IACP Membership Required to Access This Page). By clicking on each practice group, the members of each group and contact information is provided.

pate.[67] By understanding the orientation of the practice group and the other Collaborative professionals with whom the attorney collaborates, the client knows much more about this potential attorney. Also, if the POD has at least a minimum training requirement, the client will have even more information upon which to base a choice.[68] As part of both disclosure to the public and effective marketing, perhaps IACP will make the practice groups available to the public and describe the membership/training requirements and protocols for each group. By understanding orientation of the practice group and the other Collaborative professionals whom the attorney recommends, the client knows much more about this potential attorney.

B. Does the Attorney Also Litigate Non-Collaborative Cases?

Many attorneys who provide Collaborative representation also maintain active litigation practices. A consumer should be entitled to know this fact. Some clients might prefer retaining a Collaborative professional who also has personal up to date experience of local judges and court procedures as well as experience with more adversarial attorneys in case the other party goes that route. Other clients might find it beneficial that the potential attorney limits his practice to peacemaking work (mediation, Collaborative Practice, transactions) and has evolved away from positional adversarial lawyering. Either way, this orientation deserves disclosure and discussion prior to commencing a Collaborative engagement.

C. Does the Attorney Generally Do Collaborative Work Attorney-to-Attorney or Operate as a Member of an Inter-Disciplinary Collaborative Team?

Many potential consumers are attracted to Collaborative Practice because it reduces the impact of "attorney-izing" on the negotiation process. Such clients might lean toward engaging an attorney who either requires mental health and financial professional Collaborative partners or who utilizes such colleagues frequently. On the other hand, due to cost, therapy "phobia," or concern about too many cooks, some potential clients might prefer a Collaborative attorney who generally unbundles the professionals by working alone with the other attorney to commence the process and brings on neutral consultants or party coaches as needed.

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67. In my experience, "closed" practice groups generally are more democratic and "Collaborative" in intra-group interactions and the members seem to be better trained, more oriented to peacemaking, and do more Collaborative work. At the same time, "closed" groups often are criticized and resented by professionals who do not or cannot join those groups for a variety of reasons. Research is needed to explore these dynamics and long term results for practice group members and the consumers in their communities.

68. IACP offers a profile of any Collaborative practitioner who is an IACP member and signs up for a profile on the website. Collaborative professionals can be researched by name, locale, profession, and area of practice. *See* http://www.collaborativepractice.com/_loc.asp. This website is very useful consumer information.

D. Does the Attorney Favor Mediation and Utilize It Frequently in Collaborative Cases?

As indicated above[69] the comparison between mediation and Collaborative Law is part of the initial phase of the *advisor* role in providing informed consent discussion. Assuming that the client wishes to opt for Collaborative Law, part of the selection criteria for choosing a Collaborative provider may be his support of and participation in mediation. The client should inquire as to the amount of mediation and Collaborative training the attorney has completed and the frequency with which the attorney's clients participate in mediation.

E. Will the Attorney Adhere to the Collaborative Principles and Guidelines if Party 2's Attorney is not Trained in Collaborative Practice?

A brief review of the Collablaw listserv of Collaborative practitioners[70] reveals an energetic discussion as to whether Collaborative professionals will engage in the Collaborative process with attorneys who have not received even the minimum two-day basic Collaborative training. Many excellent Collaborative professionals believe that signing a Participation Agreement with an attorney untrained in the Collaborative process is unfair to clients and will give Collaborative Law an undeserved bad reputation. They are concerned this may reduce the chances of reaching agreement and that clients may be unsatisfied with the process due to extra cost and a lack of peacemaking atmosphere, goals, and behavior.

Other Collaborative professionals, such as David Hoffman[71] and I will work with untrained attorneys for several reasons. Training an experienced litigator does not guarantee that an attorney will use a meditative or peacemaking Collaborative approach in practice. I have found the converse to be true: many attorneys who have not yet had Collaborative training (and may never do so) are peacemakers in their hearts and actions and do a wonderful job in adhering to Collaborative principles—even better than some collaboratively trained colleagues. Even if an untrained attorney is truly a captive of adversarial education and practice experience, I have found that my clients' lives are improved and catastrophe is often avoided with the client authorizing me to negotiate with an ad-

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69. *See supra* p. 187.

70. Collablaw listserv, http://groups.yahoo.com/group/CollabLaw/messages (user identification required to access this page).

71. David Hoffman, former Chair of the ABA Section Dispute Resolution posted the following comment on the Yahoo Collaborative Listserv on September 14, 2007:

> My experience is similar to Woody Mosten's with regard to doing cases with lawyers who lack CL training, though I have only had three such cases. All three settled, and two of them were among the most amicable negotiations I have had, and the other was about average. Also, in two of the cases, the other parties' lawyers signed up for CL training after the case was over and they became members of the Massachusetts Collaborative Law Council. I believe there is some risk for the client associated with signing a CL Participation Agreement with an untrained lawyer, but then again even when both lawyers are trained, there is some element of risk. Therefore, IMO, the critical issues are (a) whether the client is making an informed decision, and (b) whether the alternative (i.e., no CL Participation Agreement) is truly preferable. (Cited as amended with permission from David Hoffman.)

versarial attorney who is obligated to resign if the matter does not settle and has signed on to follow the aspirational Collaborative Guidelines and Principles.[72]

F. What Will the Attorney Do if the Other Party Threatens Litigation, or Has Even Filed a Court Proceeding?

As with untrained attorneys, working without a disqualification agreement and with the threats or actual court proceedings also produces some strong views.

At an October 2007 Collaborative Law meeting in Los Angeles, a straw poll was conducted of the attorneys in attendance. They were asked if they practice "one-way" Collaborative Law wherein the practitioner would adhere to the Disqualification Agreement and Principles and Guidelines when the other attorney would not be so bound and would even threaten or file in court? Most of these attorneys indicated that they have made such attempts and, although such negotiations were bumpy, they have surprisingly led to many settlements.[73]

I agree with my Collaborative colleagues who contend that one-way disqualification engagements are risky and require full disclosure to the client about those risks, which include:

- Such negotiations are more likely to terminate without full agreement both due to the party and attorney refusal to sign the disqualification agreement. This could result in wasted or mostly wasted fees;
- During such negotiations, the tactics used by the other party's attorneys may violate the respect and cooperation provisions of the Collaborative Guidelines and Principles, possibly putting the client on the defensive or at a true disadvantage;
- If the other attorney is free to go to court, that attorney may engage in "free discovery" and observe the demeanor and risk tolerance/aversion of the "Collaborative" client giving a later advantage in mediation;
- While "Collaborative" settlement discussions are ongoing, the other attorney may be preparing for court permitting a preemptive litigation strike and at least short term advantage;
- Since these negotiations are risky and have higher odds of terminating short of settlement, thus resulting in litigation, my client may need to spend money for a second attorney (litigator) resulting in fees not just for litigation but also to review the file.[74]

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72. In 2007, I represented a high profile client in a Collaborative matter governed by a court ordered Collaborative Participation Stipulation with Guidelines. This matter had many complicated issues. The lawyer for the other party is a respected litigator and family law scholar who had not one minute of mediation or Collaborative Law training in his forty years of practice. Nevertheless, the matter was concluded totally within the confidential Collaborative process, which benefited the parties and their family. This experience has been repeated in my practice and those of other Collaborative colleagues—further research and discussion on this issue would be very helpful.

73. In my own Collaborative Practice, I ***never*** go to court in any matter and always abide by Collaborative Guidelines and Principles even if the other party's lawyer refuses to do so.

74. As a protection for this risk, I often advise my client to retain a litigator with whom we can consult during the Collaborative settlement process. This litigator may play a limited role in providing the

XIV. CONCLUSION

Collaborative Law practice has grown due to the belief of many professionals and divorcing parties that it better meets the needs of divorcing families than adversarial litigation, and in some cases, better than positional negotiation and mediation.[75] Building on the foundation of legal clinics, unbundling, and mediation, Collaborative lawyering offers many models of practice. Ethical rules and basic principles of informed client decision making requires a competent discussion of the benefits and risks not only of the model of Collaborative Law practiced by the advisor attorney, but also of options other than Collaborative Practice, both adversarial and consensual. The duty to inform also requires a discussion of the benefits and risks of various Collaborative models practiced by the advisor attorney as well as how a no-court Collaborative lawyer approach will affect the client if the other party refuses to sign a disqualification agreement or even threatens or files court proceedings.

While the theme of this article may spark vigorous discussion by both Collaborative and traditional professionals, I hope that it will improve client decision making and attorney competence to help clients and their families as well as the justice system and society at large. I further hope that this article will spur research to study the effectiveness of various Collaborative models in practice and to test many of the assumptions raised in the field today.

client a realistic view of the risks of litigation or a larger role in preparation or participation in litigation or adversarial negotiations.

75. Research is needed to test and quantify this Conclusion.

APPENDIX

Client Information About Collaborative Representation

Some clients find that Collaborative representation provides the best process for them as they go through a divorce. It has some risks and so it is not for everyone. The following chart summarizes the main benefits and risks. If you and your spouse want professional help with your divorce, you should also consider other processes, such as traditional representation and mediation, which may fit your needs better. Before choosing a Collaborative process (you have several choices), please read the following chart carefully and discuss it with your attorney to decide what is the best process for you.

ELEMENTS OF COLLABORATIVE REPRESENTATION	BENEFITS	RISKS
COLLABORATIVE GUIDELINES AND PRINCIPLES The Collaborative process involves treating each other respectfully and satisfying the interests of all family members rather than trying to gain individual advantage.	▪ The Collaborative process sets a positive tone so that you and your spouse can work to satisfy your interests. ▪ The process can reduce unnecessary and destructive conflict and avoid litigation.	▪ This process may not produce a constructive agreement if your spouse will respond only to threats, litigation, or a decision by a judge. ▪ The Collaborative process may not be appropriate if you or your spouse do not have the ability to participate effectively. Domestic violence, substance abuse, or mental illness may make the process inappropriate. ▪ You may feel unprotected if you want your Attorney to advocate strongly to protect your interests (including your concerns about your children).

ELEMENTS OF COLLABORATIVE REPRESENTATION	BENEFITS	RISKS
PARTICIPATION AGREEMENT REQUIRING DISQUALIFICATION OF ATTORNEYS IN LITIGATION Clients and Attorneys sign a Participation Agreement that includes a Court Disqualification Clause, which states that if the parties do not resolve the matter in the Collaborative process, neither attorney will represent the parties in any contested litigation between you. If you would want to hire an attorney to represent you in court, you would need to hire another attorney.	▪ The process can increase the motivation of all parties and Attorneys to reach a settlement. If negotiations break down and a law suit is filed, both parties need to hire new Attorneys and the Collaborative attorneys are out of a job. As a result, everyone in the Collaborative process focuses exclusively on reaching agreement. ▪ All parties and Attorneys focus on negotiation from the very beginning of the process. ▪ Collaborative attorneys work to negotiate constructively and avoid attacking the other side.	▪ If the Collaborative representation ends, you and your spouse will need to spend additional time and money to hire new Attorneys and may lose some information or momentum during a transition of Attorneys after developing a relationship of trust and confidence with your Collaborative attorney, you might feel abandoned emotionally and/or strategically at a time of contentious conflict. ▪ You may feel a lot of pressure if your spouse is willing to terminate the process and you want to stay in it. ▪ You should be cautious about using a Collaborative process If you do not trust that your spouse will negotiate honestly and sincerely.
TRAINED COLLABORATIVE PROFESSIONALS The Collaborative process may involve a team of Collaborative professionals who have specialized training in Collaborative divorce skills. Separate divorce coaches help each party to deal with emotional, relationship, and parenting issues. Child development specialists and financial professionals may be hired jointly to provide unbiased information and advice.	▪ You and your spouse may benefit from using a team of Collaborative professionals with different skills. ▪ Collaborative professionals usually have had special training to help promote constructive settlements. ▪ By investing the time and money for professional training, Collaborative professionals demonstrate a commitment to constructive negotiation.	▪ You or your spouse may feel some pressure to use more professionals than you want or feel that you can afford.

ELEMENTS OF COLLABORATIVE REPRESENTATION	BENEFITS	RISKS
DIRECT COMMUNICATION AND DECISIONMAKING BY THE PARTIES Parties are the key decision makers and you communicate directly with each other and the Attorneys.	▪ You and your spouse control the decisions that affect your lives and families. ▪ You and your spouse can discuss both non-legal and legal issues. ▪ You and your spouse can develop communication skills and learn how to communicate more effectively in the future.	▪ You and your spouse might increase conflict without making any progress if your communication styles are disrespectful or harmful to each other and you cannot work together constructively.
VOLUNTARY DISCLOSURE OF ASSETS, OBLIGATIONS, AND IMPORTANT INFORMATION You and your spouse make a binding commitment that you will fully disclose assets and will not to hide important relevant information.	▪ You and your spouse agree to provide each other with full information of marital and separate assets so that you can make informed decisions. ▪ The Collaborative process can include a protection against parties' failure to disclose fully. If either party does not make the required disclosures, the agreement can be set aside. ▪ The Collaborative process does not use formal court "discovery" processes to investigate the facts of your case. This can save money and avoid conflicts. Discovery does not necessarily produce full information.	▪ Your spouse may hide assets and other critical information unless you use a formal discovery process.
CONFIDENTIALITY OF COLLABORATIVE PROCESS Communications in the Collaborative process are generally confidential and inadmissible in court.	▪ Confidentiality can encourage you and your spouse to talk openly and reach creative solutions. ▪ Confidentiality permits your family business to remain private by avoiding public testimony in court and keeping sensitive documents out of the public records.	

ELEMENTS OF COLLABORATIVE REPRESENTATION	BENEFITS	RISKS
DIVORCE PROCESS MAY SAVE TIME AND MONEY The Collaborative process may save you and your spouse time and money in handling your divorce. Some courts give Collaborative cases priority within their court system and cases may not have to follow strict court schedules.	▪ The Collaborative process can help you reduce the length of negotiations and the cost of your divorce. ▪ You may save money by avoiding litigation procedures. Specialized Collaborative professionals can help resolve disputes that might otherwise go to court. ▪ Settlements can be processed quickly in court so that you can move on with your life.	▪ Collaborative cases can take a long time if there are no court deadlines to keep the process moving. ▪ The use of a team of professionals can increase the cost of your divorce.

I have read this chart and I understand Collaborative representation and its benefits and risks.

I have had an opportunity to discuss any concerns and questions I may have with my attorney before signing an Attorney-Client Engagement Agreement and before signing a Collaborative Participation Agreement with my spouse (and my spouse's attorney).

I also understand that if I have additional questions or concerns about the Collaborative representation after it begins, I am encouraged to discuss them with my attorney.

Date_____

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CLIENT