Collaborative Review

Special Judges' Edition

Journal of the International Academy of Collaborative Professionals

INTERVIEW WITH THE HON. W. ROSS FOOTE: Collaboration From the Bench

by Jennifer Jackson, JD, San Francisco, California

The Hon. Ross Foote of Rapides parish, Louisiana is best known to Collaborative Practice groupies as the guy who got the $200,000 grant to build a Collaborative Practice infrastructure and coalition from the ground up. A former board member of the International Academy of Collaborative Professionals, Ross continues to actively recruit funds for the movement and to build on his collaborative model in Louisiana. With his commitment to judicial activism, his vast network, his indefatigable spirit and bottomless anecdotal repertoire, Ross has proven to be both inspirational spokesperson and force to be reckoned with.

A graduate of Duke University, Ross spent his junior year abroad in a program he designed himself studying philosophy at the University of Manchester, England which involved traveling from Amsterdam to Marrakech on a motorcycle. He spent his first year "out" selling insurance and taking photographs. In 1975 Ross entered the Louisiana State University Law Center and met his future wife on the first day of law school. A year later, they began their 28-year marriage, which has given them two children (*"Paul, who is graduating this year from Cambridge University and, besides – or in spite of - being president of his college, won a scholarship for being the most fun student on campus: they gave him a silver tankard and 100 pounds with the instruction that it was to be spent foolishly. And David, who left public school in the eleventh grade and attends Milton Academy in Boston)*.

Ross' dedication to his community manifests in many ways. In addition to his judicial duties, Ross' high school alma mater has given him an office on site where for ten years he has run a program as a "partner in education" teaching civics and helping with discipline issues and behavior modeling. In 2004 he received an award at the governor's mansion for this program being, along with Dow Chemical and General Motors, one of the eight "distinguished partners of the state of Louisiana".

Continued on page 2

about IACP

The International Academy of Collaborative Professionals ("IACP") is a worldwide interdisciplinary non-profit organization dedicated to transforming the practice of dispute resolution in family law matters. The Academy is also exploring ways to integrate the core collaborative commitment not to litigate in other areas of civil practice. Our members are committed to serving the public and assisting the court system by fostering professional excellence and expanding the use of collaborative practice. Our legal, mental health and financial members focus on assisting parties in respectful communication and creative problem-solving. Visit our website at www.collaborativepractice.com

IACP BOARD OF DIRECTORS

Norma Trusch, JD, Texas
President
Susan Hansen, JD, Wisconsin
President-Elect
Robert Bordett, CFP, CDFA, Georgia
Treasurer/Comptroller
Rita Pollak, JD, Massachusetts
Secretary
Pauline Tesler, JD, California
Past President, Co-Editor, Review
Deborah Brakeley, M Ed, RCC, British Columbia
Nancy Cameron, LLB, Vancouver
Vicki Carpel-Miller, BSN, MS, CMFT, Arizona
Susan Gamache, R. Psych., AAMFT, British Columbia
Mark C. Hill, CFP, CDFA, San Diego, California
Margaret Opatovsky, BA, LLB, Ontario
Ronald D. Ousky, JD, Minnesota
Janis M. Pritchard, LLB, RFM, Alberta
Chip Rose, JD, California
Donald R. Royall, JD, Texas
Sherri Goren Slovin, Ohio
Ex Officio
Peggy Thompson, Ph.D, California,
Past President
Jennifer Jackson
Webmaster; Co-Editor, Review

ADVISORY BOARD

Hon. Roderic Duncan (Ret)
Gary Friedman, JD
Larry Hance, JD
Hon. Donna J. Hitchens
Janet Johnston, PhD
Hon. Anne Kass
Steven Keeva
Julie MacFarlane, BA, LLM, PhD, Ontario
Independent Researcher
John McShane, JD
Prof. Robert Mnookin, JD
A. Rodney Nurse, PhD, ABPP
Melvin Rubin, JD
Donald T. Saposnek, PhD
Harry Tindall, JD
Stuart G. Webb, JD
Prof. David B. Wexler, JD
Carol Ann Wilson, CFP, CDFA
Prof. Bruce Winick, JD

HOW TO CONTACT IACP

c/o Paula Jackson, Administrator
145 Wildhorse Valley Drive
Novato, CA 94947
e mail: info@collaborativepractice.com
WEBSITE: www.collaborativepractice.com

W. Ross Foote

Continued from page 1

How did you get started?

I spent twelve years in general practice: some domestic, some commercial. In 1990 I ran for the Ninth Judicial District and began my career on the bench on January 1, 1991. By March 15th of that year I had already decided that we had to change the domestic court. And I've been working ever since to modify what we're doing with regard to the treatment of children and families in court.

One of the first innovations we tried was to put pre-trial triage systems in place that would divert people away from the court system early on; this was unsuccessful because lawyers showed no real interest and the Court wasn't forcing the issue. So I spent nine or ten years trying to make incremental changes in the court procedures themselves and finally realized that the mere presence of the court itself was the problem. It was increasingly clear how unnecessary it was for those lawyers to be there and that cases could have been settled out of court but for lawyers' lack of tools for - and resistance to - implementing change both for themselves and for their clients. I began asking the parties point blank if they had enough money to educate their children and the lawyers' children, which didn't please the lawyers.

I vacillated somewhere between passion and obsession; I saw potential for good and tended to blame myself, which started me working on my judicial psyche. I asked myself: *why are you letting this happen? How do we improve the system*? I found myself spending more and more energy reading about this, going to retreats, forums, and spending hours on the phone. My judicial work - that I thoroughly enjoyed - turned into a stressor because I wasn't giving it the attention it deserved.

I renewed my efforts to triage family cases: to get them out of the system. The lawyers' response was that clients needed to hear from a judge that they shouldn't be in court and should settle. And yet, the clients couldn't get to a judge until they had already done the destructive trial preparing.

So I started looking for a grant to produce a video tape of me in my robe saying "*Don't come to court*". I approached a local foundation with this notion that a) clients needed to hear from a judge that they shouldn't go to court and b) it had to be at the front end. We needed a tool for attorneys to use at the initial interview with the client before the whole process started. Before I found out about Collaborative Law, the idea was to just "tell 'em to settle by any means". I set up a meeting with the Rapides Foundation for December, 2001 to get funding for a short video.

When did you first hear about Collaborative?

> *There is nothing more dangerous than justice in the hands of judges*...conversation, 1935: Herschel B. Chipp

On a flight back from England the week before the meeting, I was reading David Wexler's Therapuetic Jurisprudence book and came across an article by Pauline Tesler: Collaborative Law: What is it and Why Lawyers Need to Know About It (*ed. note: this article is posted at the IACP website www.collaborativepractice.com*). I was somewhere over Greenland when I had my own personal epiphany: I was right: we don't need the court system for divorce: let's get rid of it completely!

How did your request for a $15,000 grant turn into an award of $200,000?

I came back with a limited knowledge of Collaborative Law and went to the meeting with the foundation with a changed objective: now I was looking for $15,000 to explore "Collaborative" further. The Rapides Foundation is a local health-based foundation and this is a children's health issue. My pitch: we could pioneer a new way in Louisiana, save all the children, save all the families, and as I talked the laundry list got bigger and bigger: we needed faculty, training, materials, etc. The response was "*you're talking about $150,000*." I responded, "at least!" and asked for $300,000. While they were considering my request, they gave me a $10,000 preliminary mini-grant to go to California and talk to some of the people I had identified as "players" in the movement.

I was basically an unstructured, unguided ball of enthusiasm. It seemed to be the answer to eleven years of personal questing. It looked like a product that we could deliver and that in itself would deliver for families. I picked up the phone and called Pauline (Tesler), Chip (Rose), Peggy (Thomspon), Nancy (Ross), and Judge Donna Hitchens. Their unanimous response was: "*come see us*." I had lunch with Pauline and Peggy, and met with Donna, Linda Seinturier and Jennifer Jackson.

Continued on page 4

COLLABORATIVE REVIEW EDITORIAL BOARD

Managing Editors
Jennifer Jackson, California
Pauline H. Tesler, California

Desk Editors
Editors at Large:
Margaret Opatovsky, Ontario
Jennifer Tull, Texas

Book Reviews
Donna Beck Weaver, California
Diane L. Mader, Wisconsin

Civil/Commercial
Stacey Langenbahn

Coaches, Child Specialists
Susan Gamache, Vancouver

Copy Editors
Paula Jackson, IACP Administrator
Lynda J. Robbins, Massachusetts

Financial Specialists
Mark C. Hill, California

Feature Editors
Collaborative Corner:
Stu Webb, Minnesota

Dear Collaborator
Pauline H. Tesler, California

From the President
Norma L. Trusch, Texas

Listserv Threads
Margaret Opatovsky, Ontario
George B. Richardson, California
carl Michael rossi, Illinois

Public Education/Marketing
Liz Ferris, Wisconsin

Training/"Solutions"
Chip Rose, California

W. Ross Foote

Continued from page 3

Was the judicial "power source" critical to the beginning stages?

At this point, May of 2002, I'd gotten word that I'd been awarded a $200,000 grant to spend. I was a bit unstructured so they split it into two parts: $25,000 for development and $175,000 for implementation. They were very far sighted and said "with the potential for good, we'll take a wrinkle and try it."

I'm inclined to jump off the board and *then* check to be sure there's water. Once I had the grant, and before I had a vision of what I was doing, I invited the domestic Bar to lunch. I wanted the project to have a group tie-in: I would dedicate my time, ideas and the grant money, but I wanted the project to be basically group-directed. To them it was just some wild idea the Judge was trying. They understood the potential, but none of the mechanics. While I was getting up to speed talking to the "powers that be," I still had to translate that back to my own people to get enthusiasm going in our group here.

That's when I came up with one of my first principles: *lawyers will try anything they think a judge wants them to try*. That's how you tap into the judicial power source. We judges have the opportunity to make the lawyers take a look at collaborative and to better the lives of the people who come before us: for me, that translates into the *obligation* to do so.

> I came up with one of my first principles: *lawyers will try anything they think a judge wants them to try.*

Describe the implementation of your collaborative project

The first meeting was a mixture of confusion, skepticism, and acceptance in equal measure. What I told them was I could not order collaborative but I was going to spend $200,000 promoting it and those who didn't take the training would get left behind. My mantra from the beginning was "*we have to change the culture of conflict*". Before we could start doing that, we needed something to replace it. Which is why we spent a year and a half building our collaborative model and structure before we took cases: I didn't want it to fail.

With the $25,000 mini-grant, I brought Peggy Thompson to Louisiana to meet with lawyers and mental health professionals, to take an inventory of our resources, to assure them that collaborative really does work and to explain to them the concept of the collaborative team. I held four "town meetings" with lawyers to discuss the idea. We went with Peggy to all of the mental health groups in town - most of whom had given up domestic work because of the legal side to it - to assure them they would not be dragged into court. We began laying the groundwork for educating the judiciary.

I then asked Peggy to help me with the kind of program we could set up. I asked her to design a Rolls Royce: "If money were not an object, how would you do the training?" With Peggy and Nancy Ross' help we designed a three-part training series. I and some of the new converts then hit the service club circuit and explained to everybody what we were going to do. We worked on designing the program throughout the spring and summer of 2002. We designed a training module that included the full multidisciplinary Collaborative Divorce model.

Why did you begin with the multi-disciplinary approach?

I see the collaborative team model like this: the lawyer is like a carpenter building a house and the other professionals are the plumbing and wiring. The house just isn't going to be habitable without everyone's cooperation and involvement. If you skip over any of the parts you'll inevitably have to go back in and re-build and it will "cost" a lot more to do it later. To build a "house" in the right order, you have to have all of the professions working together from the beginning. The team model brought to the table what I felt the "status quo" missed.

> To build a "house" in the right order, you have to have all of the professions working together from the beginning.

How did you get your local group ready to take on collaborative cases?

By the fall of 2002, we had been holding meetings for about six months, just building our local team (The Collaborative Professionals Group), getting to know each other, introducing the concept to preachers, teachers, professionals, anyone who wanted to come learn about it. But no one was allowed to take a client until we completed the training together. In October, we brought the Collaborative Divorce team trainers to Louisiana (Peggy Thompson, Nancy Ross, Rodney Nurse, Talia Katz, Vicki Carpel Miller, Mark Hill, and Stu Webb) The first half day was open to anyone in the general public – for a general introduction to the process.

In January 2003 we did a further skills training in how to actually handle the four-way meetings. For this training, we brought in John McElwee, Peggy and Nancy. We separated mental health professionals from the lawyers, both thinking neither side would accept the other. At the end of the first day all of the lawyers wore John's funny hats and sang "Jaws" as we joined up with the other professionals; that was the moment our group really took off. It was a defining moment for the mental health professionals: lawyers can be silly. At the next day's meeting we came back together and did role play and traditional team training, and you couldn't tell who was a lawyer and who was a mental health professional.

The last training with Peggy and Nancy was pure team-building: we did training in communications theory and in incorporating all of the disciplines. Enthusiasm really began building; at this point we figured we had a half million invested ($200,000 grant money plus thousands of non-billed hours) and had enormous buy-in as a team. We started a marketing blitz: a radio campaign, billboards, brochures and several new published articles. We went to every service club that would have us (Rotaries, Kiwanis), but we were still not taking clients. We were trying to go to employers, preachers, hairdressers, every point of entry. I got to the point where I was so sold and rabid on this that my wife said "don't ask him about collaborative law unless you really want to know" and my mother forbade me to talk about it.

Continued on page 6

W. Ross Foote

Continued from page 5

After months of bi-monthly meetings of our practice group, we decided to take cases in June of 2003. However, the first case we tried to sign didn't work because the clients were so sold on it they spent the night before their first four-way meeting talking and they reconciled! I guess you can count this a success for collaborative because once they made the commitment to communicate they decided they didn't need to divorce.

What can judges do to help?

I have identified three things the judiciary needs to bring to the table:

1. *Publicly validate the process*

2. *Persuade the professionals to be social change agents*

Because the courts still maintain their reputation, the public will listen to judges; because they are judges they can persuade the lawyers to learn about it. If there are two constants for lawyers they are: we don't like change and we don't want to offend the judge. The two are suspended in just about an equal balance, but if a judge comes in and says: I want you to a consider change, they will do it.

3. *Police the protocols* – and keep the process pure. Judges can actually enforce the collaborative principles and provide protection to professionals. They can encourage collaborative by providing preferential treatment for collaborative cases, reducing fees, and including collaborative in local court rules.

I have yet to meet a domestic judge that really likes trials. My hope is that if we get funding, for example a big federal grant, it would subsidize me and other judges who have been trained to go out and proselytize: to get other judges together and explain to them, this is why you need to do it. Judges need more than a five-minute introduction; they need someone impassioned to say to them: you need this in your courthouse if you truly want to be a public servant. For some judges, it will be anything that clears the docket: for others, it will be the benefit to children and families.

What Now?

I've been paid cheerleader, and the only thing that has changed is the "paid" part. I became torn between my role in conventional court procedures and being an agent for social change in an untraditional manner. Nonetheless, I believe that courts need to jump in and take an active role but the vast majority of the courts are unaware of the opportunity presented by collaborative. Many well-meaning judges do not have the tools - or the inclination to go find the tools - so I've decided to bring the tools to them. This led to a big move; I stepped down from the bench mid-term to work on developing the judicial role in collaborative. This was not a decision I took lightly. For one I really like judging, and second, I went from a job with full benefits to no defined job or salary. The obligation brought about by the opportunity just got too great.

Many well-meaning judges do not have the tools - or the inclination to go find the tools - so I've decided to bring the tools to them.

I am calling my project the International Collaborative Center. With my judicial mentoring and retreat programs, my ten years on the executive committee and my having participated on fourteen different judicial committees, I know most of the judges in the state. I think I have a fair level of credibility with them. I can come into their courtrooms and say – "don't quit your job, I need you on the inside policing, persuading."

I think I can parlay my level of commitment into some state activities that will make Louisiana a unified collaborative judiciary. I will ask the Supreme Court to give me ad hoc special appointments around the state, which puts me into the local arena as a sitting judge talking to the lawyers, and gives me some "stroke" with the lawyers. And from there I'm going to do outside consulting. I will talk to other states' groups for expenses and minimum fees.

I'm back at the formative stage, the creative stage: how do I mobilize judges, how do I find grant funding for this work. I'm exploring different ways to use the process. I may serve as a process consultant for local practitioners if they have a case about to break apart – I can come in with the stature of "ex judge"; "*let's have a five-way and see if we can process the problem or fine-tune the facts*." We are creating some state training teams to help start CPG groups around the state. I am beginning to take some cases because I miss the contact with kids in divorce.

What would you say to lawyers?

You owe it to your clients to understand "best practices." And collaboration is the best arena, the best practice. You went to law school to solve human problems, not to destroy families. The adversarial domestic court does not solve problems. The higher calling of the profession is to solve those human problems in the best way possible. You owe it to your judges to educate and inform them about how they can do their job better by embracing this.

What would you say to the public?

Keep control of your case: don't give it to me, a stranger in a black robe. I do not love your children. I'd come to love them if I had the time but I could never love them like their parents. Let your parental love control the resolution of your case rather than some random court order. Understand that this is a family issue more than a legal issue. Contain the transition of the family in a family setting. And when it's resolved, then seek the legal recognition of the transition.

What would you say to Judges?

If we will acknowledge that the mere presence of a court in most divorce cases is a detrimental factor to resolution, then we can willingly embrace anything better. Accept the fact that you cannot fashion as good a result for a family as the family can do for themselves if they are given the proper tools. Embrace the concept of collaborative – learn the process, then you'll be on board and….. *welcome aboard!*

If ...the mere presence of a court in most divorce cases is a detrimental factor to resolution, then we can willingly embrace anything better.

Continued on page 8

Ross Foote

Continued from page 7

To change the culture of the conflict we're going to need not only collaboration with the professionals but we're going to need cooperation and collaboration with the judiciary. Divorce has traditionally been the judicial micro-managing of the transition of the family from the married to unmarried state. What it should be is simply the judicial recognition of the transition of the family – we have no business doing the transition itself. The presence of the court alters the dialogue which is why the participation agreement is essential to collaborative.

Where do you think this is all headed?

God knows where we are going but we're in for the fun part defining collaborative's potential. It's like a bunch of cement dumped on the ground: we need to shape it before it hardens on its own – let's design the forms to shape and smooth it so it doesn't harden in a lump.

I saw the little changes I was doing in court as trying to change every board on a boat while you're at sea. It's doable, but the one thing you can't change at sea is the design. If you change the design, the boat sinks. I see collaborative as a boat in dry dock that we can build any way we want. We are designing and building a completely new vessel, one more suited to weather the storms.

Jennifer Jackson *is certified as a specialist in family law by the California State Bar Board of Legal Specialization and is President-Elect of the Northern California Chapter of the American Academy of Matrimonial Lawyers (AAML). She co-edits The Collaborative Review with Pauline Tesler, is a member and past chair of the Bay Area Collaborative Law Group, and a founder and past chair of the San Francisco Collaborative Law Group (SFCLG). She is currently Webmaster for AAML, IACP, and SFCLG.*

IACP MISSION

The International Academy of Collaborative Professionals serves members, influences the collaborative community, and benefits the public. We are committed to fostering professional excellence in conflict resolution through Collaborative Practice. We do this by protecting the essentials of Collaborative Practice, expanding Collaborative Practice worldwide, and providing a central resource for education, networking and standards of practice

Publication Statement

The Collaborative Review is a publication of the International Academy of Collaborative Professionals ("IACP"). Correspondence should be addressed to:

IACP c/o Paula Jackson, administrator
145 Wildhorse Valley Road, Novato, CA
Tel: (415) 897-2570
Facsimile: (415) 328-8770
paula@collaborativepractice.com

The views expressed in the Collaborative Review are those of the authors and may not reflect the official policy of the IACP. No endorsement of those views should be inferred unless specifically identified as the official policy of the IACP. The IACP is not engaged in rendering legal, accounting, psychological or other professional advice. If legal advice or other expert asistance is required, the services of a competent professional person should be sought.

Sample Letter to People Filing for Divorce

To divorcing spouses:

If you have a copy of this letter, you are probably getting divorced or having problems working out a custody plan regarding your children. You may also be angry or hurt. Before you rush into court, take a deep breath and think about what you really want to accomplish. The court system will not meet any need you have to punish or feel supported. In fact, it often does the opposite and is note the best way to solve family and personal issues.

There are many ways o resolve your disagreement without fighting trough the courts. There are a number of effective alternative dispute resolution methods available to you. One of the best methods is to work things out by participating in collaborative law.

In collaborative law, two lawyers specially rained in negotiations and conflict resolution represent you and your partner or "ex", but only for the purpose of helping you settle your case. These two lawyers can never go to court for you. If you and you spouse or partner cannot each an agreement, you can terminate the collaborative process and got to court, but these collaborative lawyers cannot go to court with you. They are out of job if they cannot help you reach a mutually satisfactory settlement.

Please think carefully about the choices that are available to you. Litigation is an adversarial approach. It is expensive, tends to fan the flames of conflict, results in very personal attacks among the parties and is often limited to "winners" and "losers" by the end of the case. On the other hand, mediation or collaborative law can result in an agreed up on resolution that is less expensive, les hostile and more creative. The choices you make now can have an enormous impact on you and your children for the rest of your life.

More information about collaborative law is available in brochures that can be found in Rooms 103 and 4012 of the Civic Center Courthouse.

Sincerely yours,

Donna J. Hitchens
Supervising Judge
Unified Family Court

Donna J. Hitchens: Family Law Judge for the Twenty-First Century

or: How the World's First Superior Court Collaborative Law Department Came to Be

In March, 2000, the Honorable Donna J. Hitchens, presiding family law judge of the San Francisco Superior Court (and a member of the AICP Advisory Board) declared her courtroom to be the Collaborative Law Department of the Superior Court. To our knowledge it is the first Collaborative Law Department of its kind. And it is not an oxymoron. Pauline Tesler interviewed Judge Hitchens in September, 2000, in her chambers, to find out more.

Pauline Tesler: How did you come to establish the world's first Collaborative Law Department?

Judge Hitchens: I came at this from several directions. First, I read some excellent materials you gave me about Collaborative Law, and I began to learn about the efforts you and other attorneys were making to establish this as a new way of approaching family law matters. Second, I was approached by a group of San Francisco attorneys who wanted to educate me about how the court could support and encourage collaborative law.

PT: What specific ideas did they suggest to you for how you could help?

JH: They urged me to designate a single courtroom where collaborative lawyers could bring stipulations and judgments that needed a judge's signature, and also where they could bring any problems that might arise in their cases. The idea was that with such a department, collaborative lawyers and clients could be assured these routine papers as well as any difficulties would be handled by a judge who understood the concept and supported it. They suggested and I agreed that with the establishment of this department, collaborative law cases would be put on a special track once they were filed, where they could be nurtured, and where the collaborative law agreement would be enforced, so that participants could not undermine it and could not avoid following the procedures specified by the collaborative law agreements they had signed. Of course, there haven't yet been any enforcement problems at all for me to deal with.

PT: Were there any other ideas that emerged from your early conversations with the collaborative lawyers?

JH: Yes, for instance, we are working on a plan whereby in any case where the parties stay with the collaborative process all the way through to a signed and filed settlement agreement, the parties would qualify for a full waiver of their filing fees, as a reward for engaging in a process that is so much more constructive for families, individuals, and children. And, of course, by following the collaborative process through to conclusion, these people are not taking up any court resources at all, making a waiver of fees an appropriate recognition. The Court also provides facilities for meetings and full facilities for trainings for the San Francisco Collaborative Law Group.

PT: Was this a hard sell? Did they have to do much persuading to get you to support these ideas?

JH: (Hearty laughter.)

PT: Say more—I know that you read the materials I sent, and that you immediately accepted our invitation to join the AICP Advisory Board, for which we thank you. So something about what you saw in this emerging model must have fit with your vision of how things are supposed to be when families break down and restructure– is that true?

JH: Yes. It immediately touched that deep frustration that I think most family law judicial officers experience if they are paying attention to the effects of litigation on families. Even when we use case management there is never the time or the resources in the court system to do what is right for families. What we know first of all is that a litigation process to resolve family issues doesn't work, because there is nothing cooperative about it. It depends upon an authority figure imposing orders on parents that they don't like, and so they resist them. Second, litigation is extremely expensive and ruins families. I see families come into my court, and by the time they finish, every cent is gone. There is no longer a fund for their children's college. They play out their anger by literally bankrupting their entire family. Third, we all know that litigation only escalates these disputes rather than resolving them. We see that every day, and candidly both judges and lawyers contribute to the escalation. That is what litigation is about and that is how lawyers are trained. I can say a million times from the bench that I'm not interested in snide remarks and digs at the other lawyer and your transference on your client, and maybe it works for ten minutes. That kind of routine behavior by lawyers feeds into whatever anger and turmoil the litigants are already in. I watch this series of escalations occur in my court and feel helpless to stop it. It's a totally negative approach, and children suffer most. If you care at all about kids, you've got to hate this system.

> What we know first of all is that a litigation process to resolve family issues doesn't work, because there is nothing cooperative about it.

PT: It's becoming clearer and clearer to me what lawyers have to do to change their way of dealing with divorce and family restructuring into something more positive. And it's equally clear that you are blazing new trails about what the judiciary and the courts can do so that we can work hand in hand to keep people out of this downward spiral into chaos and ruin. If you could share the one most important thing you believe about this new collaborative model with other judicial officers in family law departments who are about to see collaborative law coming into their communities, what would that be?

JH: It's good for the courts, it's good for the litigants, it's good for their children, and it's good for the community. This is a system that empowers people to resolve their own disputes, and to do it in a more creative and

Continued on page 12

Donna J. Hitchens

Continued from page 11

more lasting manner than has ever been achieved by a court order. When people participate in resolving their own problems, they follow what they agree to. If I order them to do it, they are in active rebellion against me and the other parent or spouse. They are always going to try to get me to revisit the order, and their claim is always going to be based on something the other person did wrong. It's never going to be a positive creative process that brings them to any level of resolution.

PT: What other ideas are currently in the works for your Collaborative Law Department?

JH: We've been asking how we as a court could be as supportive as possible to the idea of Collaborative Law. So, in addition to considering the fee waivers, we are working on a cover letter that would be included in the forms packet that goes with divorce petitions. It would be a letter from me that describes Collaborative law and says to folks, "we, the court, encourage you to explore this option and seek out counsel who know how to do it." It would send the strong message that this court supports using collaborative law to resolve divorce-related disputes. Also, maybe every few months we could present a program for the community, at the courthouse, with the participation of the family law judges, to educate people about the ways that they can do the best job rather than the worst possible job of getting a divorce–how they can protect their kids and conserve their resources. We'd describe all the various decisions facing them, and emphasize our support for Collaborative Law. And I'd be sure to tell them that the basic choice is, "You can raise your children, or I can raise your children—and be assured, you will do a better job than I will!"

> We are not about protecting lawyers! We are not about attorneys, we are about FAMILIES! Our job is to serve the community! .

PT: What can collaborative lawyers do in counties and states where fast-track family law rules require rapid discovery and trial settings after a petition is filed? Those rules would completely undermine the practice of collaborative law, and yet the judicial officers may fear that their dockets would be clogged with collaborative cases that do not meet the fast-track rules.

DH: The solution is simple: carve out an exception in the local rules so that collaborative law cases are separately accounted for. Also there could be regular status conferences, to make sure that the cases are in fact still in the collaborative process and still making progress. These cases are wonderful for the courts. They do not take up judicial resources at all, and the people who make these agreements keep to them and don't come back again and again. When judges see this, how can they not support it?

PT: Do you have any words of wisdom for family law attorneys?

DH: This new collaborative work requires a whole new approach from lawyers in order to work. You know that because you are doing the training: effective collaboration requires a whole new way of thinking about how to solve divorce-related problems.

PT: It would be immensely helpful–and you are already doing this— for the courts to throw their considerable moral authority behind normalizing the idea that the best way to divorce is for people to solve their own problems. That's really implicit in everything that you have been saying. But there are some courts where the family law judges seem to worry that to support collaborative law would be to take sides on behalf of one group of lawyers rather than another–in other words that to throw their weight behind one dispute resolution model over another would be some kind of improper favoritism to one segment of the bar over another. I'm guessing that such judicial officers might react that way if they heard about the letter that you are going to distribute with the divorce petition packets, urging people to consider collaborative law. What's the answer to judges who consider advocating a particular dispute resolution model as giving unfair business advantage to one segment of the bar?

DH: We are not about protecting lawyers! We are not about attorneys, we are about FAMILIES! Our job is to serve the community! I believe that my job–the job of all judicial officers in family and juvenile law–is to serve children and families, and a community in which people cannot afford to spend their whole family estate on attorneys. So I favor any system that best serves families and children, and from everything I've seen so far, the collaborative law approach is THE best, and the least litigious. The least litigious alternative is always going to be better for families.

__Pauline Tesler__ practices family law in Mill Valley and San Francisco, California, where she has been a state certified Family Law Specialist since 1984. A graduate of Harvard University and the University of Wisconsin Law School, she has been a pioneer in bringing Collaborative law to the West Coast, a founder of the Bay Area Collaborative Law Group, a founder of the American Institute of Collaborative Professionals and co-editor of this publication. Ms. Tesler writes and speaks frequently about Collaborative Law, and trains attorneys in how to achieve the "paradigm shift" involved in effective Collaborative Law practice.

VISIT OUR WEBSITE

at www.collaborativepractice.com

FOR:

Resources, Articles, Links, Documents, Group Directory, Member Directory and more!

Statement of Principles and Guidelines for Collaborative Practice

Although there are many forms of Collaborative Practice and many types of "Teams", this is taken from a comprehensive set of principles for all of the professionals developed by Collaborative Practice of Silicon Valley.

I. INTRODUCTION

1.01 The essence of "Collaborative Practice" is the shared belief of the participants that, in typical Family Law matters, it is in the best interests of the parties and their family to commit themselves to avoiding adversary legal proceedings. We seek to adopt a conflict resolution process that does not rely on a Court imposed solution. Collaborative Practice does, however, rely on an atmosphere of honesty, cooperation, integrity, and professionalism geared toward the future well being of the parties and their children.

1.02 One of our major goals in adopting Collaborative Practice is to minimize, if not eliminate, the negative economic, social, and emotional consequences of the traditional adversary legal process to the parties and their family. We commit ourselves to the Collaborative Practice process and agree to seek a better way to resolve our differences justly and equitably.

II. NO COURT OR OTHER INTERVENTION

2.01 By electing to treat our Family Law matter as a Collaborative Practice case, the parties and their attorneys are committing themselves to settling the case without Court intervention. The parties agree to give complete, full, honest, and open disclosure of all information having a material bearing on the case, whether requested or not, and to engage in informal discussions and conferences for the purpose of reaching a settlement of all issues. All legal, financial and mental health professionals as well as therapists, appraisers, evaluators, and other consultants retained by the parties will likewise be directed to work in a cooperative effort to resolve issues without resort to litigation or any other external decision making process.

III. LIMITATIONS OF COLLABORATIVE PRACTICE

3.01 In choosing Collaborative Practice, we understand there is no guaranty of success. We further understand we cannot eliminate concerns about the disharmony, distrust and irreconcilable differences that have led to the current circumstances. While we all are intent on striving to reach a cooperative and open solution, actual performance may fall short.

3.02 Even though we have adopted Collaborative Practice, the parties are still expected to protect their respective interests and not to allow themselves to lapse into a false sense of security in the assumptions and expectations each hold about the other. Subject to the requirements of applicable law, the parties may continue to act in their own best interests, and not in the other party's interests, in areas which are outside the dispute, such as in changing estate plans and in future financial and other activities.

IV. PARTICIPATION WITH INTEGRITY

4.01 As participants in the Collaborative process, we are concerned about protecting the privacy, respect, and dignity of all involved, including parties, lawyers, coaches, financial professionals, child specialists, and any consulting professionals, and we agree to uphold a high standard of integrity. The parties and all professionals specifically agree that they shall not take advantage of inconsistencies, misstatements of fact or law, or others' miscalculations, but shall disclose them and seek to have them corrected. In the event a Collaborative attorney discovers inconsistencies, misstatements of fact or law, or miscalculations by his or her client or by any consulting professional, the attorney shall inform that person of the discovery and remind him or her of the obligations under this Agreement and request that person to make the required disclosure. In the event a Collaborative Professional discovers that she or he has made a misstatement of law or a miscalculation, she or he shall disclose and correct the same. In the event a Collaborative Professional discovers that his or her collaborative counterpart has made a misstatement of law or a miscalculation, she or he shall inform the attorney of the discovery and request him or her to disclose and correct the same.

> Collaborative Practice [relies] on an atmosphere of honesty, cooperation, integrity, and professionalism geared toward the future well being of the parties .

V. COACHES, CHILD SPECIALIST, AND FINANCIAL PROFESSIONALS

5.01 The parties may retain Coaches and a Financial Professional to assist in the resolution of this matter. In addition, if appropriate, they shall also retain a Child Specialist to give support and a voice to their children during the divorce process.

5.02 In addressing concerns about sharing the enjoyment of and responsibility for the parties' minor children, the parties, Coaches, and Child Specialist shall make every reasonable effort to reach amicable solutions that promote the best interests of the children. The parties agree to act quickly to mediate and resolve all differences related to the children in a manner that will promote a caring, loving, and involved relationship between the children and both parents.

5.03 In selecting additional professional assistance, the parties are encouraged to retain joint experts and consultants. In the event separate experts or consultants are retained, each of them shall be directed to follow the spirit and direction of these Principles and Guidelines, and to collaborate with each other, meet and confer, and, if possible, render joint statements on the matters in question.

VI. NEGOTIATION IN GOOD FAITH

6.01 The parties understand that even with full and honest disclosure, the Collaborative process will involve vigorous good faith negotiation. Each party will be expected to take a reasoned approach on all disputed matters and, where such approaches differ, each party will be encouraged to modify their approach when necessary to reach a resolu-

Continued on page 16

Principles and Guidelines

Continued from page 15

tion of all disputed matters. Although the parties should be informed by their attorneys and consultants about the litigation process, neither a party or attorney may use threats of going to court as a way of forcing settlement.

VII. ABUSE OF COLLABORATIVE PROCESS

7.01 Collaborative counsel shall immediately withdraw from a case upon learning that their client has knowingly withheld or misrepresented information having a material bearing on the case or otherwise acted so as to undermine or take unfair advantage of the Collaborative process. For example, the secret disposition of community, quasi-community, or separate property in violation of the Standard Family Law Restraining Orders, failure to disclose the existence or the true nature of assets and/or obligations, on-going emotional or physical abuse by either party, or withholding a secret plan or intention to flee the jurisdiction of the court with their children contrary to an agreement or existing court order.

7.02 All understand that the ultimate sanction against professionals who abuse the Collaborative process, or condone and/or encourage such abuse by their clients, is the diminution of that professional's reputation in the legal community, including the Family Law Judiciary.

VIII. DISQUALIFICATION BY COURT INTERVENTION

8.01 The parties and their collaborative professionals shall sign these Principles and Guidelines, and a Collaborative Divorce Agreement or a Stipulation and Order Re: Collaborative Practice and agree to be bound by its terms and provisions. The parties understand that their attorneys' representation is limited to the Collaborative process. Thus, while your collaborative attorney is your advisor, counselor and advocate, he or she cannot represent you in court, nor go with you to court in person, nor be named or remain as your attorney of record on any document filed with the court.

8.02 In the event a party files adversary documents with the court, the collaborative professionals will be disqualified from further representing their clients and the Collaborative process will automatically terminate. Except upon mutual written agreement of the parties to the contrary, in such event all consultants will be disqualified as witnesses and their work product will be inadmissible as evidence in any adversary court proceeding.

IX. WITHDRAWAL OF ATTORNEY

9.01 If a collaborative attorney deems it appropriate to withdraw from the case for any reason, he/she agrees to do so by a written Notice of Withdrawal to the parties and their attorneys, all other participants and, if a Stipulation and Order has been filed, to the court. This may be done without terminating the status of the case as a Collaborative Practice case.

9.02 The party losing her or his collaborative attorney may continue in the Collaborative process by retaining a new collaborative attorney who will agree in writing to be bound by these Principles and Guidelines.

X. ELECTION TO TERMINATE COLLABORATIVE PROCESS

10.01 If a party decides that the Collaborative process is no longer appropriate and elects to terminate the status of the matter as a Collaborative case, they agree to do so by sending a written Termination Election to all other parties, collaborative professionals, and other participants and, if a Stipulation and Order has been filed, to the court.

10.02 The termination of status may also occur automatically in the event a party deems it necessary to initiate an adversary court proceeding to protect their property, themselves or their children. This process is also outlined in the Collaborative Practice Agreement and / or the Stipulation and Order Re: Collaborative Practice.

XI. SELECTION OF NEW ATTORNEY; ADDITIONAL FEES

11.01 Once the status of the case as a Collaborative Practice matter is terminated, the collaborative attorneys agree to assist their respective client in the selection of new attorneys.

11.02 The parties understand that in retaining new attorneys in the event of the termination of the status of the case as a Collaborative Practice matter, each party will incur additional attorney fees which may equal or exceed that paid to his or her current collaborative attorney.

XII. PLEDGE

12.01 All parties, lawyers, coaches, financial professionals, and other consulting professionals hereby pledge to comply with and to promote the spirit and written word of this document.

Dated:
Wife ______________________________

Dated:
Husband ______________________________

Dated:
Attorney for Wife ______________________________

Dated:
Attorney for Husband ______________________________

Coach for Wife ______________ Coach for Husband ______________

Financial Professional ______________ Child Specialist ______________

CONSULTING PROFESSIONALS

Appraiser______________ Actuary ______________

Vocational Evaluator ______________________________

Other Consulting Professional ______________________________

Frequently Asked Questions About Collaborative Practice

What are Collaborative Law, Collaborative Practice, the collaborative process, and Collaborative Divorce?

Collaborative Law, Collaborative Process, and Collaborative Divorce are terms often used interchangeably. However, they are all components of Collaborative Practice, which has these key elements: the voluntary and free exchange of information; the pledge not to litigate, and the commitment to resolutions that respect the parties' shared goals. Collaborative Law describes the legal component of Collaborative Practice, made up of the parties and their attorneys. Collaborative Process means the key elements of the process itself.

While "Collaborative Divorce" refers to resolution of particular types of disputes (divorce and domestic partnerships), the other terms can also apply to disputes involving employment law, probate law, construction law, real property law, and other civil law areas where the parties are likely to have continuing relationships after the current conflict has been resolved.

What is the difference between Collaborative Practice and Mediation?

In mediation, an impartial third party (the mediator) facilitates the negotiations of the disputing parties and tries to help them settle their case. However, the mediator cannot give either party legal advice, and cannot be an advocate for either side. If there are lawyers for the parties, they may or may not be present at the mediation sessions, but if they are not present, the parties can consult their counsel between mediation sessions. Once an agreement is reached, a draft of the settlement terms is usually prepared by the mediator for review and editing by the parties and counsel.

Collaborative Law was designed to allow clients to have their lawyers with them during the negotiation process, while maintaining the same commitment to settlement as the sole agenda. It is the job of the lawyers, who have received training similar to the training that mediators receive in interest-based negotiation, to work with their own clients and one another to assure that the process stays balanced, positive and productive. Once an agreement is reached, it is drafted by the lawyers and reviewed and edited by the both lawyers and the parties, until both parties are satisfied with the document.

Both Collaborative Practice and mediation rely on the voluntary and free exchange of information and a commitment to resolutions that respect the parties' shared goals. If mediation does not result in a settlement, the parties may choose to use their counsel in litigation, if this is consistent with the scope of representation upon which the client and lawyer have agreed. In Collaborative Practice, the lawyers and parties sign an agreement, which aligns everyone's interests in the direction of resolution, and specifically provides that the collaborative attorneys and any other professional team members will be disqualified from participating in litigation if the collaborative process is terminated without an agreement being reached. Professional advice should be sought when deciding whether mediation or Collaborative Practice is the best process for any individual case.

What is a "Collaborative Team?"

The premise of the "collaborative team" is that parties and their chosen professionals act as a problem-solving team rather than as adversaries. A collaborative team can be any combination of professionals that the parties choose to work with to resolve their dispute. It can be just the parties and their collaborative lawyers, which in all cases comprise the Collaborative Law component of Collaborative Practice. It can be the parties, their collaborative attorneys and a financial professional. It can be the parties and divorce coaches, working as a team either before or after the collaborative attorneys are chosen and the legal process begins.

What is the "Interdisciplinary Team Model"?

The interdisciplinary collaborative team model (first developed by IACP former board president Peggy Thompson and IACP former board member Nancy Ross as Collaborative DivorceSM) is a multi-disciplinary team approach to dispute resolution (usually separation and divorce), which includes attorneys, coaches, a financial specialist, and when there are minor children, a child specialist working interactively as co-equals. Professionals on the team all subscribe to the same core values and shared beliefs, consistent with the IACP ethical guidelines, that none of the team members will be involved in any court process concerning a shared case, and all members will withdraw from the case if it becomes a court process.

Team members are selected by the clients at the beginning of the case. The team is ideally made up of two collaborative lawyers, one for each partner, two divorce coaches, one for each partner, a child specialist who represents the voice of the child(ren), and one neutral financial specialist along with the divorcing couple. A key element of the team approach is that the couple can enter into the interdisciplinary collaborative team process through any "door";. A couple, for example, might first contact a Collaborative divorce coach, a Collaborative lawyer or a Collaborative financial specialist to begin the process. Regardless of which "door" they enter, the couple will be guided to select their team. Many teams share a common participation agreement which the couple signs first with their attorneys.

The premise of the "collaborative team" is that parties and their chosen professionals act as a problem-solving team rather than as adversaries. A collaborative team can be any combination of professionals that the parties choose to work with to resolve their dispute.

The divorcing couple works with their divorce coaches to enhance their communication skills as well as learn self management and negotiation skills to help them during their divorce process.

When they first meet individually with their divorce coaches, they work on acquiring the skills and knowledge they will need to have successful four-way meeting with their coaches as well as with their collaborative lawyers. During these meetings the couple learns how to communicate their concerns effectively and discuss options for their parenting plan. These four-way meetings are not only crucial in helping the couple to work with the rest of the team during the divorce process, but can assist them in improving their co-parenting relationship as well.

During this process, the child specialist talks with the parents and meets with the child to assess the child's needs and concerns. The child specialist also assists the parents in recognizing and meeting the developmental needs of the child, while providing the child a voice in the divorce process. Unlike a custody evaluator, the child specialist does not make specific recommendations, but works with the coaches and the parents in making informed decisions to help their child. This information that the child specialist provides is essential not only for parents, but for the entire team as well.

With the information received from the child specialist, the couple, with the help of their coaches, will craft the parenting plan which is then incorporated into their final divorce document.

Continued on page 20

Frequently Asked Questions

Continued from page19

The neutral financial specialist meets with the divorcing couple and helps them begin their dialogue around financial issues, while assisting them in gathering all the necessary financial information. The financial specialist works closely with the couple and their respective lawyers in understanding both present and future financial consequences of various possible settlement options. Often this information is presented in a five-way meeting with the financial specialist, the two collaborative lawyers, and the couple where the options are discussed. Then the couple, along with their attorneys, crafts their financial settlement.

Often the process is coordinated by a case manager - usually one of the divorce coaches. This professional acts as a case coordinator to keep all the team members informed and the process on track.

This integrated model provides the couple with the services they need from the professional most qualified to address each of the complex and varied issues of divorce. Working together, these Collaborative professionals help divorcing couples achieve an outcome that would not be possible without this cooperative team involvement.

What is the difference between Collaborative Practice and conventional divorce?

In conventional divorce, one spouse sues the other for divorce and sets in motion a series of legal steps. These eventually result in a settlement achieved with the involvement of the court. Unfortunately, spouses going through a conventional divorce can come to view each other as adversaries, and their divorce as a battleground. The ensuing conflicts can take an immense toll on the emotions of all the participants, especially the children.

Collaborative Practice, by definition, is a non-adversarial approach to divorce. The spouses—and their lawyers—pledge in writing not to go to court. They negotiate in good faith, and achieve a mutually-agreed upon settlement outside of court. The cooperative nature of Collaborative Practice can greatly ease the emotional strain caused by the breakup of a relationship, and protect the well-being of children.

What does Collaborative Practice do to minimize the hostility often present in divorce?

Collaborative Practice is guided by a very important principle: respect. By setting a respectful tone, Collaborative Practice encourages the divorcing spouses to demonstrate compassion, understanding and cooperation. In addition, Collaborative professionals are trained in non-confrontational negotiation to help keep discussions productive. The goal of Collaborative Practice is to build a settlement on areas of agreement, not to perpetuate disagreement.

How does Collaborative Practice actually work?

When a couple decides to pursue a Collaborative Practice divorce, they each hire Collaborative Practice lawyers. All of the parties agree in writing not to go to court. Then, the spouses meet both privately with their lawyers and in face-to-face discussions. Additional experts, such as divorce coaches and child and financial specialists, may join the process, or in many cases, be the first professional that a client sees. These sessions between spouses and their counselors are intended to produce an honest exchange of information and expression of needs and expectations. The well-being of any children is especially addressed. Mutual problem-solving by all the parties leads to the final divorce agreement.

Is Collaborative Practice a faster way to get a divorce?

Individual circumstances determine how quickly any divorce process proceeds. However, Collaborative Practice can be a more direct and efficient form of divorce. From the start, it focuses on problem solving, not blaming or endlessly airing grievances. Full disclosure and open communications help to assure that all issues are discussed in a timely manner. Finally, because settlement is reached out of court, there is no waiting for the multiple court appointments that may be necessary with conventional divorce.

Sample Local Rule

San Francisco County Superior Court Local Rule 11

A. All collaborative law cases in the San Francisco Unified Family Court must be assigned to the Supervising Judge, Department 405.

B. No case must be entitled to a designation as a "collaborative law" case for special assignment unless all of the following requirements are met:

1. The parties have signed either a written Collaborative Law Agreement or Collaborative Law Stipulation that provides for a full and candid exchange of information, the withdrawal of advisory counsel if the use of the collaborative law procedures is terminated, and the joint retention of any experts needed to assist the parties in reaching a collaborative settlement;
2. All documents filed in the case are submitted by the parties in pro pria persona;
3. No contested matters are presented by motion or order to show cause that require judicial resolution; and
4. The term Collaborative Law Case is included in the caption of any document filed with the Court.

C. The Collaborative Law process is, by its very nature, a series of intense settlement negotiations, therefore:

1. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to the Collaborative Law proceeding is admissible or subject to discovery, and disclosure of the evidence must not be compelled in any non-criminal proceeding;
2. No writing, as defined in Evidence Code section 250 that is prepared for the purpose of, in the course of, or pursuant to, a Collaborative Law Case is admissible or subject to discovery, and disclosure of the writing must not be compelled in any non-criminal proceeding; and
3. All communications, negotiations or settlement discussions by and between participants in the course of a Collaborative Law proceeding must remain confidential.

D. As to any case designated as a Collaborative Law Case, the Court will:

1. Consider collaborative counsel to be advisory and not attorneys of record;
2. Refuse to set any hearings, impose discovery deadlines or enter scheduling orders; and
3. Provide notice and an opportunity to be heard prior to any dismissal based upon a failure to prosecute or for delay.

E. The designation of a case as a Collaborative Law Case is totally voluntary and requires the agreement of all parties. The Collaborative Law Case designation will be removed by the Court upon stipulation of the parties or a noticed motion filed with the court indicating a party's desire to cease the collaborative law process and compliance with any termination provisions of the written Collaborative Law Agreement or Stipulation. In the event collaborative law procedures are terminated, the case will be reassigned pursuant to Rule 11.3.

F. Except as otherwise modified in this Rule, Collaborative Law Cases are governed by the Family Code and California Rules of Court.

Sample State Statute

Texas Collaborative Law Statute

H.B. No. 1363

AN ACT
relating to the mediation of certain disputes by collaborative law procedures.

BE IT ENACTED BY THE LEGISLATURE OF
THE STATE OF TEXAS:

SECTION 1. Subchapter G, Chapter 6, Family Code, is amended by adding Section 6.603 to read as follows:

Sec. 6.603. COLLABORATIVE LAW. (a) On a written agreement of the parties and their attorneys, a dissolution of marriage proceeding may be conducted under collaborative law procedures.
(b) Collaborative law is a procedure in which the parties and their counsel agree in writing to use their best efforts and make a good faith attempt to resolve their dissolution of marriage dispute on an agreed basis without resorting to judicial intervention except to have the court approve the settlement agreement, make the legal pronouncements, and sign the orders required by law to effectuate the agreement of the parties as the court determines appropriate. The parties' counsel may not serve as litigation counsel except to ask the court to approve the settlement agreement.
(c) A collaborative law agreement must include provisions for:
(1) full and candid exchange of information between the parties and their attorneys as necessary to make a proper evaluation of the case;
(2) suspending court intervention in the dispute while the parties are using collaborative law procedures;
(3) hiring experts, as jointly agreed, to be used in the procedure;
(4) withdrawal of all counsel involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute; and
(5) other provisions as agreed to by the parties consistent with a good faith effort to collaboratively settle the matter.
(d) Notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law, a party is entitled to judgment on a collaborative law settlement agreement if the agreement:
(1) provides, in a prominently displayed statement that is boldfaced, capitalized, or underlined, that the agreement is not subject to revocation; and
(2) is signed by each party to the agreement and the attorney of each party.
(e) Subject to Subsection (g), a court that is notified 30 days before trial that the parties are using collaborative law procedures to attempt to settle a dispute may not, until a party notifies the court that the collaborative law procedures did not result in a settlement:
(1) set a hearing or trial in the case;
(2) impose discovery deadlines;
(3) require compliance with scheduling orders; or
(4) dismiss the case.
(f) The parties shall notify the court if the collaborative law procedures result in a settlement. If they do not, the parties shall file:
(1) a status report with the court not later than the 180th day after the date of the written agreement to use the procedures; and
(2) a status report on or before the first anniversary of the date of the written agreement to use the procedures, accompanied by a motion for continuance that the court shall grant if the status report indicates the desire of the parties to continue to use collaborative law procedures.
(g) If the collaborative law procedures do not result in a settlement on or before the second anniversary of the date that the suit was filed, the court may:
(1) set the suit for trial on the regular docket; or
(2) dismiss the suit without prejudice.

THE COLLABORATIVE REVIEW

SECTION 2. Subchapter A, Chapter 153, Family Code, is amended by adding Section 153.0072 to read as follows:

Sec. 153.0072. COLLABORATIVE LAW. (a) On a written agreement of the parties and their attorneys, a suit affecting the parent-child relationship may be conducted under collaborative law procedures.
(b) Collaborative law is a procedure in which the parties and their counsel agree in writing to use their best efforts and take a good faith attempt to resolve the suit affecting the parent-child relationship on an agreed basis without resorting to judicial intervention except to have the court approve the settlement agreement, make the legal pronouncements, and sign the orders required by law to effectuate the agreement of the parties as the court determines appropriate. The parties' counsel may not serve as litigation counsel except to ask the court to approve the settlement agreement.
(c) A collaborative law agreement must include provisions for:
(1) full and candid exchange of information between the parties and their attorneys as necessary to make a proper evaluation of the case;
(2) suspending court intervention in the dispute while the parties are using collaborative law procedures;
(3) hiring experts, as jointly agreed, to be used in the procedure;
(4) withdrawal of all counsel involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute; and
(5) other provisions as agreed to by the parties consistent with a good faith effort to collaboratively settle the matter.
(d) Notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law, a party is entitled to judgment on a collaborative law settlement agreement if the agreement:
(1) provides, in a prominently displayed statement that is boldfaced, capitalized, or underlined, that the agreement is not subject to revocation; and
(2) is signed by each party to the agreement and the attorney of each party.
(e) Subject to Subsection (g), a court that is notified 30 days before trial that the parties are using collaborative law procedures to attempt to settle a dispute may not, until a party notifies the court that the collaborative law procedures did not result in a settlement:
(1) set a hearing or trial in the case;
(2) impose discovery deadlines;
(3) require compliance with scheduling orders; or
(4) dismiss the case.
(f) The parties shall notify the court if the collaborative law procedures result in a settlement. If they do not, the parties shall file:
(1) a status report with the court not later than the 180th day after the date of the written agreement to use the procedures; and
(2) a status report on or before the first anniversary of the date of the written agreement to use the procedures, accompanied by a motion for continuance that the court shall grant if the status report indicates the desire of the parties to continue to use collaborative law procedures.
(g) If the collaborative law procedures do not result in a settlement on or before the second anniversary of the date that the suit was filed, the court may:
(1) set the suit for trial on the regular docket; or
(2) dismiss the suit without prejudice.

SECTION 3. (a) This Act takes effect September 1, 2001.
(b) This Act applies only to an action commenced:
(1) on or after the effective date of this Act; or
(2) before the effective date of this Act if the trial in the action has not begun before the effective date of this Act.

The Collaborative Review of the
International Academy of Collaborative Professionals
c/o Paula Jackson, Administrator
145 Wild Horse Valley Drive
Novato, CA 94947

The Collaborative Review is the official publication of the
International Academy of Collaborative Professionals.
We solicit original manuscripts, which should be saved in Microsoft Word or WordPerfect
and sent to Jennifer Jackson, 220 Montgomery Street, 15th Floor, San Francisco, CA 94104
or e-mailed to collaborate@jacksonpage.com

JOIN IACP!!

What you get:

Subscription to the Collaborative Review
Reduced admission and fees for IACP seminars, trainings, forums and publications
Listing in the Member Directory on the IACP Website
...and much more!

To join, go to our Website at www.collaborativepractice.com

COLLABORATIVE PRACTICE
Resolving Disputes Respectfully

International Academy of Collaborative Professionals
www.collaborativepractice.com