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PRACTICE & PROCEDURE

Collaborative Law: An Innovation Here to Stay

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Over the past twenty years, the practice of law has seen the innovation of collaborative law progress from a movement in alternative dispute resolution to an accepted form of practice. A benchmark of this acceptance is the Uniform Law Commission's (ULC) promulgation and acceptance of the Uniform Collaborative Law Act (UCLA).[1] Importantly, the UCLA provides a guide to both procedure and policy, which serves to further the practice. Collaborative law has proven to be an important practice tool in family law offering clients a superior means of resolution and allowing attorneys to help them achieve it.

Inception and Overview Of the Collaborative Law Process

In 1990, Minnesota lawyer Stu Webb formed the concept of collaborative law, and with the help of several colleagues began to promote the concept.[2] The inception of collaborative law was fueled by discontent with the impact of the adversarial system on family law matters.[3] After years of witnessing unhappy family law clients negatively impacted by traditional litigation, Webb set out to reform his personal practice of law to help clients move through divorce in a more ''civil manner'' without court intervention.[4] Among his goals were to create a process that would economize time, cost, and stress.[5] Additionally, Webb sought to provide clients with autonomy in a problem-solving setting.[6] By Webb's definition, a collaborative lawyer is a ''settlement specialist'' who promotes relinquishing resentment and working towards resolution with good will.[7]

In keeping with Webb's goals, collaborative law has been described as ''advocacy without litigation.''[8] The process begins with opposing lawyers and clients entering into a formal participation agreement to work to-

[1] Unif. Collaborative Law Act (2009).

[2] Stu Webb, *An Idea Whose Time has Come, Collaborative Law: An Alternative for Attorneys Suffering 'Family Law Burnout,'* 18 Matrim. Strategist, July 2000, at 7.

[3] *Id.*

[4] *Id.* at 7.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] James K. L. Lawrence, *Collaborative Lawyering: A New Development in Conflict Resolution,* 17 Ohio St. J. on Dispute Resol. 431, 431 (2002); *see* Forrest S. Mosten, *Collaborative Law Practice: An Unbundled Approach to Informed Client Decision Making,* 2008 J. Disp. Resol. 163, 168.

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gether for resolution.[9] This participation agreement sets forth in a record signed by the parties a pledge to attempt resolution without court intervention.[10] The participation agreement further provides that if a collaborative settlement is not reached and litigation becomes necessary, the collaborative attorneys will withdraw from the case and the parties must use different lawyers for litigation.[11] After entering into a participation agreement, the parties and their attorneys convene in multiple joint meetings to discuss issues and goals, gather information, and eventually, work out a settlement agreement.[12] Collaborative law is further characterized by the parties' agreement to fully disclose information without engaging in a formal discovery process.[13]

Ethics and Collaborative Law

Since its inception, collaborative law has been most controversial in regard to legal ethics. Indeed, ethics has been characterized as the ''glass ceiling'' of collaborative law.[14] Specifically, debates have concerned whether the withdrawal or disqualification agreement providing that counsel will withdraw or be disqualified from representation if the collaborative law process does not succeed is unethical.[15] Also, the debates have concerned whether the participation agreement, by which the attorneys and parties involved agree to work together for resolution, results in a conflict of interest by creating a responsibility on the part of the attorneys to the other party. [16] Legal scholars have likewise debated whether a lawyer participating in collaborative law is truly providing zealous advocacy for his client as required by professional codes of conduct if the scope of representation is limited to negotiations.[17] Ethical issues regarding whether the requirement of candor by an attorney during collaborative representation clashes with the professional duty to maintain attorney client privilege have also been subjects of this debate.[18]

With ethical issues central to the acceptance and legitimacy of collaborative law, there has been call for a new Model Rule of Professional Conduct of the American Bar Association.[19] However, to date, no such rule has been promulgated. Instead, ethical issues have been the subject of state bar association opinions in Kentucky, Minnesota, New Jersey, North Carolina, and Pennsylvania.[20] While all of these opinions concluded that collaborative law was not unethical per se, they are contrasted by the Colorado Ethics Opinion 115, 32 FLR 1238 (2007), which concluded that the disqualification agreement was in violation of the state's rules of professional conduct governing conflicts of interest.[21]

In a nutshell, the Colorado opinion held that an impermissible agreement between a lawyer and a third person results from the lawyer's agreement to cease his representation of a client, if the collaborative process is unsuccessful.[22] According to the Colorado opinion, the effect of the withdrawal agreement is for an attorney to subject himself to serving the interests of a third party (e.g. the opposing party) in the instance of a failure to come to resolution, which could result from the third party's interests alone.[23]

In order to understand the ethical implications of collaborative law and thus, to be able to avoid such issues in practice, it is important to have knowledge of the arguments that collaborative practice is unethical. Nonetheless, lawyers can feel confident about the ethics of collaborative law under the 2007 American Bar Association Opinion 07-447.[24] This opinion considered and relied on the ABA Model Rules of Professional Conduct, specifically Rule 1.2, and held that the withdrawal agreement does not impair a lawyer's ability to represent his client because the ''collaborative law process is only a limited scope representation.''[25] Such limited scope of representation is explicitly provided for by Rule 1.2 which states, ''[a] lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.''[26] By limiting the scope of representation, a lawyer avoids creating a responsibility to a third party and thereby avoids creating a non-waivable conflict of interest prohibited by Model Rule 1.7.[27]

Opinion 07-477 makes it apparent that collaborative law is not unethical per se stating:

> Before representing a client in a collaborative process, a lawyer must advise the client of the benefits and risks of participation in the process. If the client has given his or her informed consent, the lawyer may represent the client in the collaborative process. A lawyer who engages in collaborative resolution processes still is bound by the rules of professional conduct, including the duties of competence and diligence.[28]

As the ABA Model Rules as of yet do not directly address the ethical issues of collaborative law, the significance of the ABA's Opinion 07-477 is clear. That collaborative practice comports with currently accepted ethical standards and warrants no additional standards at this time is implicit in Opinion 07-477.

While the ABA opinion is only advisory to states, it nonetheless serves as a guide for lawyers as well as for legislators and others interpreting the law.[29] As such, the opinion lends legitimacy to the collaborative prac-

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[9] Pauline H. Tessler, Collaborative Law: Achieving Effective Resolution in Divorce Without Litigation, 9-10 (2d ed. 2008).
[10] *Id.* at 14.
[11] *Id.*
[12] *See Id.* at 54-55, 64-65.
[13] *Id.*
[14] Christopher M. Fairman, *A Proposed Model Rule for Collaborative Law*, 21 Ohio St. J. on Disp. Resol. 73, 74 (2005).
[15] Christopher M. Fairman, *Growing Pains: Changes in Collaborative Law and the Challenge of Legal Ethics*, 30 Campbell L. Rev. 237 (2008).
[16] *Id.*
[17] Christopher M. Fairman, *A Proposed Model Rule for Collaborative Law*, 21 Ohio St. J. on Disp. Resol. 73, 84-85 (2005).
[18] *Id. at 87 and 94.*
[19] *Id. at 116-18.*
[20] Ted Schneyer, *The Organized Bar and the Collaborative Law Movement: a Study in Professional Change*, 50 Ariz. L. Rev. 289, 311 (2008).
[21] *Id. at 311-12.*
[22] *Id.*
[23] *Id.*
[24] ABA Comm. on Ethics and Prof. Resp., Formal Op. 07-447, 33 FLR 1538 (2007).
[25] *Id.*
[26] *Id,* quoting Model Rules of Prof'l Conduct R. 1.2(c) (2007).
[27] *Id.*
[28] *Id.*
[29] Ted Schneyer, *The Organized Bar and the Collaborative Law Movement: a Study in Professional Change,* 50 Ariz. L. Rev. 289, 309 (2008).

tice as it simultaneously sets forth a bedrock for ethical collaborative practice: informed consent.

The Uniform Collaborative Law Act

Just as ABA Opinion 07-477 has greatly furthered acceptance of the practice of collaborative law, state collaborative law statutes and the new Uniform Collaborative Law Act have served to do the same. In recognition of the legitimacy of collaborative law, in 2007, with the practice of collaborative law increasing throughout the country and with the recent ethical consideration of collaborative law by the ABA, the ULC undertook to create the UCLA. Prior to this time, a small number of states already had statutes codifying collaborative law, with Texas passing the first collaborative law statute in 2001, followed by California, North Carolina and Utah.[31]

Formerly known as the National Conference of Commissioners on Uniform State Laws (NCCUSL), the ULC has provided states with proposed uniform laws that bring ''clarity and stability to critical areas of state statutory law'' for over one hundred years.[32] On July 15, 2009 in Santa Fe, New Mexico, after two years of drafting, the UCLA was accepted by the ULC at the annual meeting of the Commission.[33] The UCLA represents the growing acceptance and stability of collaborative law as a form of practice. For practitioners who are not already using collaborative law in their practice, UCLA signifies that collaborative law is more than a trend in practice but rather is an important practice tool. The Family Law Section and the Dispute Resolution Section of the ABA have endorsed the UCLA. The House of Delegates of the ABA declined to approve the act in 2011 (see 37 FLR 1495), however the ULC remains resolute that the UCLA should be enacted in all jurisdictions and is working hard to see such enactments. State acceptance of the UCLA has begun with Utah, Nevada, and Texas having enacted the uniform act. In addition to signifying the acceptance of collaborative law, the UCLA provides attorneys with valuable instruction as to the collaborative procedure and policy support by the act.[34]

The UCLA as a Practice Guide

The UCLA is written broadly as a guide applicable to all areas of civil law, not just family law. The UCLA provides definitions of terms and thereby provides a clear guide for lawyers.[35] The UCLA also clearly sets forth requirements for a Collaborative Law Participation Agreement.[36] In accordance with these requirements, a participation agreement must: be in a record, be signed by the parties, state that the parties intend to use collaborative law for resolution of their dispute, describe the nature and scope of the case, identify the lawyers, and contain a confirmation statement by each lawyer confirming his representation of the party in the collaborative process.[37] The foregoing requirements are set forth as the minimum, and additional provisions may be included in a participation agreement, so long as they are not inconsistent with the UCLA.[38] The purpose of this section is to guide parties and attorneys to a written agreement reflecting the parties' intent to participate in the collaborative process. Further, it provides a simple written record of the nature and scope of the matter to be resolved collaboratively and suspends court intervention.

The practical guidance of the UCLA continues in Section 5 with instructions for beginning and concluding the collaborative law process.[39] The collaborative process does not begin until the parties have signed the participation agreement.[40] Unlike other forms of alternative dispute resolution, a court may not order participation in collaborative law.[41] Thus, engaging in the collaborative process is voluntary and intentional, and the start of the process is clear.

In contrast to the start of the process requiring mutual consent, a party may unilaterally terminate the process.[42] A party may terminate the process by giving notice to the other party in writing that the process is terminated, beginning a proceeding related to the matter without the other party's consent, or otherwise initiating court intervention or action in a pending proceeding related to the matter.[43] A party may terminate with or without cause.[44] The collaborative process may also terminate upon the withdrawal or discharge of the collaborative lawyer unless the unrepresented party engages new counsel, and the parties reaffirm the participation agreement and the agreement is amended to identify the successor lawyer and confirms the new representation.[45]

Of course, the collaborative process may also conclude upon resolution of the case as evidenced in a written record.[46] The UCLA further provides that when parties reach a resolution, that they may seek court approval of that resolution without terminating the collaborative process, so long as the parties agree to see such approval.[47] Importantly, parties may still conclude the collaborative process and resolve only a portion of their case and agree that certain issues will not be resolved in the process.[48] In addition to the foregoing ways in which the collaborative process may terminate or conclude, the parties may identify additional methods of ending the process in their participation agreement.[49]

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[31] *See, e.g.,* Cal. Fam. Code § 2013, N.C. Gen. Stat. §§ 50-70 to 50-79 (2007); Tex. Fam. Code Ann. § 6.603(b) (Vernon 2006); Tex. Fam. Code Ann. § 153.0072(a) (Vernon 2008); Utah R. Jud. Admin. 4-510(1)(D), (6)(A) (2009).

[32] Unif. Collaborative Law Act at 3.

[33] Lawrence R. Maxwell, Jr., *The New Uniform Collaborative Law Act: It's Here,* Alternative Dispute Resolutions, Fall 2009, at 29 & n.2, *available at* http://www.collaborativelaw.us/articles/UCLA_It's_Here.pdf.

[34] Harry L. Tindall, Jennie R. Smith, *The Uniform Collaborative Law Act as a Teaching Tool,* 38 No. 2 Hofstra L. Rev. 685, 692-98. (2009).

[35] Unif. Collaborative Law Act § 2.

[36] *Id.* at § 4.

[37] *Id.* at § 4(a).

[38] *Id.* at § 4(b).

[39] *Id.* at § 5.

[40] *Id.* at § 5(a).

[41] *Id.* at § 5(b).

[42] *Id.* at § 5(c) & (d).

[43] *Id.* at § 5(d).

[44] *Id.* at § 5(f).

[45] *Id.* at § 5(g).

[46] *Id.* at § 5(c).

[47] *Id.* at § 5(h).

[48] *Id.* at § 5(c)(2).

[49] *Id.* at § 5(i).

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Disclosure of Information

The UCLA provides further guidance for the collaborative process by telling parties how to approach the disclosure of information.[50] With interest based negotiations and mutually beneficial resolutions as major goals of the collaborative law process, the UCLA calls for ''timely, candid, and informal disclosure'' of pertinent information.[51] Such information is to be given without formal discovery.[52] Likewise, such information must be updated promptly if it has materially changed.[53] Despite the requisite of full disclosure, the UCLA keeps with the goal of party autonomy and allows for the parties to further define the scope of disclosure during the collaborative process.[54]

The Courts' Role Defined

The UCLA provides a mandatory stay of proceedings by the court upon filing of a signed collaborative law participation agreement.[55] Despite the stay of court proceedings that a participation agreement provides to a pending case, a presiding court may require parties and lawyers to provide a status report on the proceedings.[56] The contents of such a status report however are limited so as not to reveal confidential information such as assessments, evaluations, recommendations, or findings, but rather to include only basic information such as whether or not the process has occurred, terminated, who attended, and whether an agreement was reached.[57] In the event that a status report contains communication made in violation of the previously described limitations, the court is not permitted to consider the information.[58]

In recognition of the need for protection for victims of family violence and the need for protection of assets, the UCLA makes an exception to the bar against court intervention in order to allow a court to take appropriate emergency action.[59] The UCLA specifically authorizes a court to make an emergency order ''to protect the health, safety, welfare, or interest of a party'' or family/household member.[60] With the UCLA's inclusion of the term ''interest,'' the provision for emergency orders is not limited to physical well-being but will likewise include financial interests. Although seeking an emergency order will terminate the collaborative law process and subsequently require the withdrawal of the collaborative lawyer from the case, the UCLA permits the collaborative lawyer to continue on the case in order to seek or defend a petition for emergency order.[61] Importantly, these provisions serve to guarantee access to the court for a person in need of emergency protection.

The UCLA also empowers courts to find that parties have entered into a valid participation agreement, despite the fact that an agreement fails to meet the requirements of a participation agreement, or that family violence is not properly assessed, or the requirement of informed consent is not met.[62] If a court finds that a party signed a record indicating intent to enter into a collaborative law participation agreement and reasonably believed he or she was indeed participating in such a process and if the interest of justice permits, a court may enforce the collaborative settlement, apply disqualification provisions, and apply privilege to the process. [63] While these provisions allow the court to cure a defect in the process, they likewise protect parties from unintentionally entering into the collaborative process. Additionally, these provisions promote the goal of client determination of outcome where indeed the parties have expressed the intent to proceed collaboratively.

Disqualification

Collaborative law requires that a lawyer who has handled a case collaboratively is disqualified from handling litigation related to the cases that have proceeded collaboratively. This disqualification is fundamental to collaborative law. Accordingly, that UCLA sets forth this requirement and provides guidance as to the breadth of as well as exceptions to the requirement.[64] The disqualification requirement is imputed to other lawyers in the firms with which the collaborative lawyer is associated.[65] However, just as a collaborative lawyer is permitted under the UCLA to seek court intervention for approval of a resolution or emergency relief, other lawyers in the collaborative lawyer's firm can do the same.[66]

However, in keeping with the goal of accessibility of collaborative law, the UCLA makes two exceptions to the imputed disqualification of a collaborative lawyer's firm.[67] The first exception is made for representation of a low-income party.[68] If the collaborative lawyer was serving a low income party in the collaborative matter without receiving a fee, then that lawyer's firm may not be disqualified from participation in related litigation if the collaborative law participation agreement so provides, if the collaborative lawyer is isolated from any participation in the litigation, and if the party indeed meets the income requirements for free representation.[69]

A similar provision applies when one of the parties to a collaborative law participation agreement is a government entity.[70] Although a collaborative lawyer in the matter is disqualified upon termination of collaborative law, the lawyer's firm may participate in a substantially related matter for a client who is a government entity, so long as the collaborative law participation agreement so provides and if the collaborative lawyer is isolated from any participation in the litigation.[71]

[50] *Id.* at § (12).
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.* at § 6(a)
[56] *Id.*
[57] *Id.* at § 6(c).
[58] *Id.* at § 6(d).
[59] *Id.* at § 7.
[60] *Id.* at § 7.
[61] *Id.* at § 9(c).
[62] *Id.* at § 20.
[63] *Id.*
[64] *Id.* at § 9.
[65] *Id.* at § 9(b).
[66] *Id.* at § 9(c).
[67] *Id.* at §§ 10 & 11.
[68] *Id.* at § 10.
[69] *Id.*
[70] *Id.* at § 11.
[71] *Id.*

Ethics

The UCLA serves as a guide to ethics in the collaborative process. The Act mandates that the same professional responsibility and obligations apply to lawyers engaged in the collaborative law process in the same manner as in any other legal setting.[72] Specifically, the Act provides that the standards of professional responsibility are not altered by the UCLA for a collaborative lawyer.[73] Assuring that there is no uncertainty about the inclusiveness of this provision, the Act reiterates the particular duty of an attorney ''to report abuse or neglect, abandonment, or exploitation of a child or adult'' in accordance with applicable law.[74]

The UCLA reflects ABA Opinion 07-447 in its provisions regarding determining the appropriateness of collaborative law and the need to gain informed consent from a prospective client prior to engaging in the collaborative process.[75] The UCLA imposes an affirmative duty for a lawyer to work with the prospective party in considering factors the lawyer ''reasonably believes relate'' to whether or not collaborative law is appropriate for the matter.[76] Likewise, a lawyer must provide a prospective client with information about the risks and benefits of collaborative law that the lawyer believes is ''reasonably sufficient'' for the client to give informed consent to proceeding collaboratively.[77] The UCLA requires that both the assessment of appropriateness and the gaining of informed consent must be completed prior to a lawyer engaging in the collaborative process with a prospective client.[78]

Domestic Violence

The UCLA provides guidance for the use of the collaborative process when there has been a history of domestic violence towards or coercion of the other party.[79] When such circumstances exist, the UCLA requires that a party requests use of collaborative law, and that the lawyer reasonably believes a party's safety can be adequately protected during the process.[80] Prior to engaging in a collaborative process, the lawyer must inquire whether domestic violence or coercion has been an issue between the prospective parties.[81] In addition, to providing accessibility to collaborative law, these provisions create safeguards for parties with a history of coercion or domestic violence in their relationship.

Confidentiality and Privilege

The UCLA protects the confidentiality of communication during collaborative proceedings by prohibiting a court from requiring that a status report include information such as assessments, evaluations, recommendations, reports, or findings.[82] Thus, should the case ever come before the court, the substance of the collaborative process will not influence the outcome in the court.[83] The scope of confidential communication may also be extended or limited by agreement of the parties.[84] This provision for confidentiality promotes settlement in allowing parties to discuss and disclose matters with an expectation of privacy.

The UCLA goes beyond providing for mere confidentiality and stipulates that communication during the collaborative law process, including that from nonparties, is privileged.[85] Inasmuch, the UCLA further promotes candor in exchange of information during the process. To achieve such a broad scope of privilege, the UCLA sets forth that collaborative communication is not subject to disclosure and is not admissible as evidence.[86] However, the UCLA stipulates that evidence or information resulting from a collaborative process that is otherwise admissible and discoverable independent of the process, remains admissible and discoverable.[87] For example, a bank statement produced in the process that would be otherwise admissible and discoverable and would thus be subject to disclosure outside of the process. This provision allows underlying evidence that gave rise to privileged communication to yet be discovered.

Although the UCLA's provisions for privilege greatly protect collaborative communication, the UCLA likewise limits privilege.[88] In addition to an individual waiving the right to claim privilege, privilege may be waived either expressly by agreement of the parties either in a record or orally during a proceeding.[89] In the event that a person makes a disclosure of communication that results in prejudice to another party, the disclosing person is precluded from asserting privilege to the extent necessary for the prejudiced party to respond.[90] Privilege of collaborative law proceedings applies to both party and nonparty participant, both of whom can refuse to disclose communication or prevent disclosure by another person.[91] Accordingly, lawyers and any jointly retained experts must join in waiving privilege.

Privilege is also limited to exclude communication that occurred during an open collaborative session, that is a threat or plan to cause injury or commit a violent crime, or that is a plan to commit or attempt to conceal a crime.[92] In addition, the UCLA provides exception of privilege if the disclosure is sought during a court proceeding on a felony or misdemeanor and the need for the evidence substantially outweighs the interest in confidentiality.[93] Reports of suspected abuse or neglect of a child or adult are likewise excepted from privilege as is information needed to disprove such allegations.[94] Likewise, disclosure of communication is excepted from privilege when it is sought to prove or defend claims of professional misconduct.[95] Importantly, ex-

[72] *Id.* at § 13.
[73] *Id.*
[74] *Id.* at § 13(2).
[75] *Id.* at § 14.
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.* at § 15.
[80] *Id.*
[81] *Id.*
[82] *Id.* at § 6.
[83] *Id.* & *Id.* at cmt.
[84] *Id.* at § 16.
[85] *Id.* at § 17.
[86] *Id.* at § 17(a).
[87] *Id.* at § 17(c).
[88] *Id.* §§ 18 & 19.
[89] *Id.* at §§ 18(a) & 19(f).
[90] *Id.* at § 18(b).
[91] *Id.* at § 17(b).
[92] *Id.* at § 19(a)(1)-(3).
[93] *Id.* at § 19(c).
[94] *Id.* at § 19(b).
[95] *Id.* at § 19(b)(1).

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ception of some communication during a particular collaborative proceeding does not render exception nor discoverability for other communication during the process.[96] Accordingly, the UCLA provides that there is no general loss of privilege.

The UCLA as a Guide to Policy

Taken as a whole, the UCLA can be viewed as a policy guide for the resolution of conflict. In addition to codifying collaborative procedure, the UCLA contains an extensive reporter's note and detailed comments, which likewise serve as a guide to policy.[97] With the collaborative requirement of avoidance of traditional litigation and court intervention, the UCLA promotes the policy of self-determination by the client of the process outcome. The requirement of informed consent makes it clear that a client has autonomy in choosing whether or not the collaborative process is appropriate for his or her case. The provision for unilateral termination of the process with or without cause further supports the policy of self-determination. The UCLA further promotes client autonomy by strict provisions requiring a stay of court proceedings, so long as the case is being pursued collaboratively. The ability of clients to tailor their participation agreement to their case and include agreements beyond those required by the Act further evidences the policy of self-determination.

The UCLA also promotes the policy of civility. By focusing on compromise outside of court, the UCLA encourages the maintenance of relationships and avoidance of the destruction that is frequently the result of litigation.[98] With the requirement of full and candid disclosure without formal discovery requests, the UCLA promotes civility between parties by the requirement of responding to a request. The UCLA provisions for confidentiality serve as a guide for parties to respect each other's privacy. Similarly, the protection inherent in the privilege provisions promote civility by providing parties and nonparties an environment in which they are more likely to have full candor in settlement discussions without concern that the information will be shared with outsiders or used in subsequent litigation. By providing limitation to imputed disqualification for cases involving low-income parties and governmental entities as client, the UCLA make collaborative law more broadly available and promotes civility of compromise for a wider spectrum of cases.

Importantly, the UCLA provides policy guidance to lawyers with regard to ethics in practice. The UCLA promotes lawyers zealously advocating for their clients while simultaneously promoting compromise and civility. Further the UCLA teaches that attorneys are held to the same standards of professional conduct notwithstanding the nature of the process. The UCLA's reiteration of the requirement of an attorney to report suspected neglect of abuse promotes the policy of protection of clients. The requirement of informed consent reflects the policy that lawyers provide clients with full and accurate information so that the client may choose how to proceed.

[96] *Id.* at § 19(e).
[97] *Id.* at §§ 2-20 cmts.
[98] *Id.* at prefatory note.

Collaborative Law: A Practical Perspective

Since April of 2001, collaborative law has been an important part of the family law practice of Tindall & England, P.C., of Houston, Texas. To date the firm has handled over 110 cases collaboratively, with a successful rate of resolution of over 94%. The superiority of collaborative law is multidimensional. One such dimension greatly valued by clients is the economy of the process with regard to time. While cases in traditional litigation may drag on for months with time consuming court appearances, the average length of time between the start of the process with signing of the participation agreement and court approval of resolution within the firm has been approximately six months. To date, the firm's longest collaborative case lasted forty-three months with the parties finally reconciling but entering a marital property agreement. The unusually prolonged nature of that case exemplifies the ability for clients engaged in collaboration to proceed with autonomy.

Clients benefit from and greatly appreciate the predictability of the collaborative process. At the first joint meeting with all attorneys and clients, the participation agreement is signed. At this time, clients also discuss goals, issues, and interests, which form a map of what must be resolved. Further promoting predictability, a code of conduct is included in the participation agreement. Among other things, this requires agreement of confidentiality, honest, good faith participation, and civil communications. Clients generally follow the code and this promotes further predictability in order that clients can feel confident as they are negotiating their case. Predictability also results from the court's inability to hale parties into court. Rather, clients control when they meet and are not subject the court's schedule.

In family law, the outcome of a case results in a shift in family life. For families in transition, one of the most advantageous qualities of collaborative law is that it provides more integrity and peace to the process. In contrast to litigation, collaborative law pushes parties to recognize and acknowledge the other party's goals and interests, even if not shared.

Collaborative law is further unlike litigation as the process is intended to result in a mutually beneficial outcome rather than one party prevailing over the other. In the case of a divorce with children, often parties leave the process better equipped to co-parent post-divorce. Because the process requires parties working together to achieve resolution, parties emerge from the process having worked on this skill, which can be useful in the future.

Challenges exist in the practice of collaborative law just as in traditional litigation. In family law, those challenges arise with regard to the same issues of children and property, but the collaborative process provides means for dealing with those issues. For divorcing parents who have significant disagreements about what is in their children's best interest, joint engagement of a communication coach or mental health professional, who can help the parents come to resolution, can be a solution. Similarly, joint retention of a financial advisor can help parties come to agreements with regard to a complex financial estate.

Conclusion

Collaborative law is truly an innovation in the practice of law. For families in transition and other parties in conflict it provides a new paradigm in alternative dispute resolution. Through advocacy and professional groups including the International Academy of Collaborative Professionals (IACP) and the Collaborative Law Institute of Texas (CLI-TX) and professionals dedicated to civility and peacefulness resolution of legal issues, collaborative law has moved to the forefront of law practice. With the promulgation and acceptance of the Uniform Collaborative Law Act by the Uniform Law Commission, the practice of collaborative law is clearly here to stay.

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