

MISSOURI BAR - ADR COMMITTEE
SUBCOMMITTEE ON COLLABORATIVE LAW
May 11, 2007

1. Key Developments

(a) The Ethics Committee of the Colorado Bar Association issued its Ethics Opinion 115 dated February 24, 2007 concluding that Collaborative Law violates Rule 1.7(b) of Professional Conduct. (same as Missouri's version at Missouri Supreme Court Rule 4-1.7(b).) The opinion is available at:

<http://www.cobar.org/group/display.cfm?GenID=10159&EntityID=CETH>

The Colorado Committee reasoned that Collaborative Law harms the client in that the lawyer has responsibilities to a third person due to the participation/disqualification agreement thereby foreclosing alternatives otherwise available to the client. The client cannot even consent to this limitation on representation because Collaborative Law can lead to a conflict that "will materially interfere with the lawyer's independent professional judgment."

Some Critiques:

University of Missouri Professor John Lande: "Lessons for Collaborative Lawyers"
<http://www.mediate.com/articles/landeJ3.cfm>

http://familylaw.typepad.com/family_law_news/2007/03/critique_of_col.html

<http://www.abanet.org/journal/redesign/05ncolab.html>

(b) State Statutes:

(i) Texas statutes recognize collaborative law procedures for divorce and child custody cases defining what constitutes a collaborative law agreement and how to obtain a court's judgment based upon a collaborative law agreement. (See Section 6.603 and Section 153.0072 of the Texas Family Code.)

(ii) California statutes state "The parties may utilize a collaborative law process to resolve any matter governed by this code." (Section 2013 of Chapter 469 of the Family Code) and a working group was created "to study and make recommendations for a comprehensive statute governing the practice of collaborative law." (Section 3022.3 of Chapter 469 of the Family Code).

(iii) North Carolina has a statute "establishing collaborative law procedures . . . whereby parties seeking a divorce and their attorneys may settle their disputes by written agreement with limited judicial intervention." (Chapter 50, Article 4, Sections 50-70 et sequitur).

(c) International Academy of Collaborative Professionals has created a Task Force on Ethics: <http://www.collaborativepractice.com/articles/EthicsTaskForce.doc>

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(d) National Conference of Commissioners on Uniform State Laws has created a Collaborative Law Drafting Committee

Drafting Committee on a Collaborative Law Act

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This committee will draft an act on collaborative law . . . The committee will also consider whether the act should be limited to family law cases or expanded to other areas of the law such as estate planning.

(e) The American Bar Association's Section of Dispute Resolution has created a Collaborative Law Committee: <http://www.abanet.org/dispute> or <http://www.abanet.org/dch/committee.cfm?com=DR035000>

(f) No known caselaw

A source of national news and citations is:
<http://www.bostonlawcollaborative.com/resources>

2. Trends and Issues

Ethical Issues and Rules of Professional Responsibility

No Formal Written Opinions from Missouri Disciplinary Counsel or Ethics Counsel (but Ms. Sara Rittman, Legal Ethics Counsel on January 8, 2007 wrote a letter confirming a telephone conversation with Mr. Hugh O'Donnell that it was not an ethical problem to promote collaborative law.)

Other states (in addition to Colorado above) have issued opinions

- Minnesota (Office of Lawyers Professional Responsibility, Advisory Opinion, March 12, 1997)
- North Carolina (North Carolina State Bar, 2002 Formal Ethics Opinion 1, April 19, 2002)
- Pennsylvania (Informal Opinion 2004-24, May 11, 2004)
- Kentucky (Ethics Opinion KBA E-425, June 2005)
- New Jersey (Opinion 699 from Advisory Commission on Professional Ethics, December 12, 2005)

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3. Resources

a) Missouri Groups

- i) Collaborative Family Law Association in St. Louis
130 South Bemiston, Suite 706
Clayton MO, 63105

Contact: Susan Amato
Phone 314-727-7122
amato@anet-stl.com
Website: www.collaborativefamilylaw-mo.org

- ii) Collaborative Law Institute of Missouri in Kansas City
1310 Carondelet Dr., Ste 300
Kansas City MO, 64114

Contact: Karen Plax Phone 816-942-1900
kaplax@swbell.net

Website: www.collablawmo.com

- iii) Mid-Missouri Collaborative and Cooperative Law Association

Contact: David Gibbons: dgibbons@mchsi.com

Website: www.mmcccla.org

b) International Academy of Collaborative Professionals

[http://www.collaborativepractice.com /](http://www.collaborativepractice.com/)

c) <http://www.mediate.com/collaborativelaw/index.cfm>

d) Professor Lande at the University of Missouri-Columbia School of Law has a webpage with his articles: <http://www.law.missouri.edu/lande/publications.htm>

e) Pauline Tesler, Collaborative Law: Achieving Effective Resolution in Divorce without Litigation, ABA Publication 2001, ISBN – 1-57073-931-5

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4. Upcoming Training

University of Missouri-Columbia October 12, 2007
Academic Symposium

Discussions with Missouri Bar and possibly three practice groups to sponsor practical skills workshop near the October 12, 2007 date in Columbia

International Academy of Collaborative Professionals lists nationwide training at: <http://www.collaborativepractice.com> /