Collaborative Law and CBA Ethics Opinion 115

Who's My Client Again?

by Matthew M. Wolf

In the interest of full disclosure, I must start with this disclaimer: I have never used the Collaborative Law model in any of my cases and, unlike my colleague, Ann Gushurst, I do not practice family law, the practice area most suited for Collaborative Law.[1] However, as a member of the Colorado Bar Association (CBA) Ethics Committee[2] that issued Formal Opinion 115 on Collaborative Law,[3] I had the pleasure (tongue firmly in cheek) to review and analyze voluminous materials on this topic, including sample Collaborative Law agreements, state statutes specifically geared toward the practice, ethical opinions, and legal commentaries. Those practitioners who participate in Collaborative Law may disagree, but I believe this examination and analysis enables me to comment on the ethics of Collaborative Law. Indeed, the majority of CBA Ethics Committee members, by necessity, weigh in on the ethical implications of legal practices for which they have no personal experience.

In my opinion, all that attorneys need to know about Collaborative Law to conclude—consistent with the findings in Opinion 115—that it is *per se* unethical, is this: A lawyer practicing within the model must sign a contract, in his or her individual capacity, that legally binds the lawyer to the adverse party to terminate representation of the client in the event the process is unsuccessful and the matter must proceed to litigation.[4] The typical Collaborative Law agreement—often referred to as a four-way agreement because of the four-way meeting (two lawyers, two parties) that is the hallmark of the process—also contractually obligates the parties, including counsel, to timely and fully disclose all relevant materials. Some four-way agreements even require counsel to withdraw if he or she determines that the client is participating in bad faith.[5]

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Collaborative Practice: A Paradigm Shift

by Ann C. Gushurst

When the Colorado Bar Association (CBA) Ethics Committee released Opinion 115[1] regarding Collaborative Law, it was the seventh such opinion: Pennsylvania, New Jersey, Maryland, Kentucky, Washington, and North Carolina previously had weighed in on the subject, each concluding that collaboration is ethical. Because most U.S. states have virtually identical ethical rules based on the American Bar Association (ABA) Model Rules, Colorado's opinion was a bit of a surprise.

Opinion 115 has received a "bad rap" to the extent that some (mainly those who haven't read it) claim it condemns collaborative practice. It does not. Most of the opinion comments on the nature of collaboration and informed consent and, like all other ethical opinions, gives thoughtful commentary on family law representation. However, this commentary is not strictly limited to collaborative practice. The one practice Opinion 115 criticizes is actually small and easily remedied.

Foundations of Collaborative Practice

As Matt points out, he (and most of the CBA Ethics Committee) is not a family law attorney and is not collaboratively trained. So, when Matt claims that the cornerstone of collaborative practice is the four-way disqualification agreement, he isn't strictly correct. The heart of collaborative practice does indeed require parties and counsel to contractually agree to basic collaborative principles. This, however, does not mandate a four-way contract.

In actuality, the irony is that, for other reasons than those outlined in the opinion, many of us in Colorado already had stopped using four-way agreements in favor of two-way contracts between

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Proponents claim that these contractual requirements create incentive to settle, foster good faith negotiations, and create a conducive environment for problem solving.[6] Ann points out that Collaborative Law enables divorcing parties to maintain a relationship, which often is necessary when children are involved, by avoiding acrimonious litigation. Ann also states that advocacy is about "getting for the client what the client wants." I do not dispute that this is the case, nor do I dispute that Collaborative Law often is an effective means of doing so.[7] However, it is the lawyer practicing within this construct that the Ethics Committee was concerned with in issuing Opinion 115. Although Collaborative Law may benefit some clients, the traditional Collaborative Law model does not fit within our existing ethical construct.

Collaborative Law and the Disqualification Agreement

In recent years, the practice of Collaborative Law has enjoyed a steady increase in popularity in Colorado and throughout the United States.[8] The practice has been scrutinized by commentators and in the ethics opinions in several states, but remained relatively unscathed prior to the issuance of Opinion 115 by the Colorado Ethics Committee.[9] Certainly, until publication of Opinion 115, no ethics opinion or commentator had taken the position that the practice of Collaborative Law was *per se* unethical. In fact, the American Bar Association (ABA) Standing Committee on Ethics and Professional Responsibility very recently sanctioned the practice of Collaborative Law in Formal Opinion 07-447,[10] and in so doing, expressly disagreed with the analysis and conclusions contained in Opinion 115. As Ann correctly notes, Opinion 115 therefore shocked the Collaborative Law, family law, and alternative dispute resolution communities.

The conclusion in Opinion 115 that the practice of Collaborative Law violates the Colorado Rules of Professional Conduct was based entirely on Rule 1.7(b). Colorado Rule of Professional Conduct 1.7(b), Conflict of Interest: General Rule, provides in relevant part:

> A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to . . . a third person . . . unless . . . (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation.

The comment to Rule 1.7 further explains:

> Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client.

Ann generally questions whether a conflict even arises by virtue of the disqualification provision. Given that Collaborative Law, by its very nature, involves an agreement between the lawyer and a "third person" (that is, the opposing party), whereby the lawyer agrees to impair his or her ability to represent the client, I think there can be little doubt that the current Rule 1.7 is implicated.[11]

Of course, in some circumstances, a client may authorize the representation notwithstanding the conflict. A client's consent, however, is valid only where the lawyer "reasonably believes the representation will not be adversely affected" by the responsibilities to the third party and a disinterested lawyer would agree with this assessment.[12] I believe the Ethics Committee correctly concluded in Opinion 115 that Collaborative Law, insofar as it contains a disqualification provision, creates a nonconsentable conflict of interest because: (1) the possibility that a conflict will materialize is significant, and (2) the potential conflict inevitably interferes with the lawyer's independent professional judgment in considering the alternative of litigation in a material way.[13]

It is not only the technical application of Rule 1.7(b) that is troubling. Evidence exists that Collaborative Law practitioners view themselves as representing their client 51 percent and representing the family or the process 49 percent.[14] More troubling still is that a recent quantitative analysis uncovered some role confusion among Collaborative Law practitioners.[15] In fact, Professor Julie Macfarlane, a noted Collaborative Law scholar, concluded from this quantitative analysis that:

> [i]t may be that lawyers favoring this [team player] approach see their primary relationship to be with the lawyer on the other side, rather than with their own client.[16]

It therefore appears that some Collaborative Law practitioners truly need to remind themselves, who's my client again?

Cooperative Law

On this point, Ann and I agree: Opinion 115 finds only the disqualification provision *per se* unethical. In other words, although Opinion 115 cautions lawyers against other ethical pitfalls implicated by the practice model (for example, communications with clients, clients under disability, and collaborative/cooperative law organizations), the only aspect of Collaborative Law that the CBA Ethics Committee concluded was *per se* unethical was the clause contained in the four-way agreement contractually requiring the lawyer to withdraw in the event that the process proved unsuccessful and the parties elect to proceed to litigation.[17]

Scott R. Peppet, Associate Professor of Law at the University of Colorado Law School, correctly explained this in his September 2007 article, "Colorado Ethics Opinion 115: Next Steps for Colorado's Collaborative Lawyers."[18] In his article, Peppet states that practitioners simply need to excise any disqualification language from the four-way agreement. Opinion 115 defined this practice model as Cooperative Law and sanctioned it subject to a laundry list of caveats.[19] Thus, Cooperative Law is a landmine capable of being ethically navigated.

Moreover, the inability of a Colorado lawyer to ethically enter into a disqualification provision with an opposing party should have little to no practical impact on the lawyer's representation of his or her client. As the Ethics Committee noted at footnote 11 of Opinion 115, "it is axiomatic that private parties in Colorado may contract for any legal purpose."[20] Thus, parties who wish to participate in a collaborative environment may agree to terminate their respective lawyers in the event that the process fails, provided the lawyer is not a party to that contract. Anyway, once the clients have

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clients long before the opinion was issued.[2] Matt's assertion that collaboration "by its very nature, involves an agreement between the lawyer and a 'third person' (that is, the opposing party) whereby the lawyer agrees to impair his or her ability to represent the client," thus is mistaken. I haven't been using four-way contracts for nearly two years.[3] Also, because Opinion 115 is very clear that a two-way agreement between clients to dismiss their attorneys if collaboration fails poses no ethical violation, this opinion amounts to "much ado about nothing."

Understanding What Collaborative Law is . . . and What it is Not

Part of this debate turns out to be making sure that those discussing the subject really understand what Collaborative Law is and, conversely, what it is not. The heart of collaboration is that the resolution process is conducted in a nonadversarial fashion. Staying out of court, which is its most recognizable feature, is only one part of the equation. In addition to foregoing court intervention, parties agree to joint experts and communication coaches to get them through impasse; they agree to be respectful and honest with each other; and they agree to take only reasoned positions with open and full disclosure of all facts and all needs. This isn't just "nice" negotiating; it is a framework within which resolution can amicably occur. In stark contrast, litigation is an adversarial process in which each side vigorously pursues their best case, even if such an outcome would come at the direct expense of the opposing party, in the hope that justice is achieved when a judge sorts through all the allegations on both sides and imposes settlement.

Collaboration Versus Litigation

Collaboration reasons that if the opposing parties try to find a settlement equitable for both, then each has a much better chance of getting their fundamental needs met. Both the goals of collaboration—that is, mutual good outcomes as opposed to each client/attorney team really caring only about maximizing that client's outcome—and the mechanism for resolution are wholly different from litigation.

Litigation carries with it significant financial and emotional costs, even when settlement is achieved without going to court. Its greatest drawback—other than it doesn't always produce the best results—is that it frequently cements hostility between the two parties. This, in turn, can have devastating long-term consequences.[4] Matt complains that collaboration confuses the client's needs with those of the family; to a certain extent, he is right. However, this is because most clients identify their family's needs as being the same as their own[5] and, moreover, identify "peaceful resolution" as a desirable goal.

What makes collaboration unique, even from mediation, is the initial agreement to proceed nonadversarially. The idea is to offer the advantages of having an attorney's advice without the disadvantages of litigiousness. This doesn't mean collaborative attorneys can't discuss or even recommend litigation, as Opinion 115 suggests. We can and we do.

Cooperative Law

Between litigation and collaboration is a strange hybrid called "Cooperative Law," which the CBA Ethics Committee really liked. Cooperative Law is representation pursuant to collaborative agreements that lack the disqualification clause. Because Cooperative Law does not preclude courtroom representation, there is no need for a disqualification clause, which in turn eliminates the conflict of interest that most bothered the Ethics Committee. However, Cooperative Law attorneys still would be contractually bound to a third party in ways that might be considered to "impair" their ability to represent their client.[6] It also should be noted that Cooperative Law is, for the most part, a theoretical construct (not practiced in Colorado that I know of), primarily discussed by academics in scholarly articles.[7]

Disqualification

It seems the only limitation that really bothered the CBA Ethics Committee was the disqualification of the attorney from litigating, which, they reasoned, impaired the attorney's ability to represent the client's best interests. If "impair" means that attorneys can't go to court, okay, then we are impaired. However, that "impairment" equally exists in all unbundled representations, and already is a well-accepted limitation on representation outside collaboration.

On a practical level, disqualification is a no-brainer. No client heading to litigation after a collaborative case fails would choose their collaborative counsel to represent them in court. The collaborative attorney, who was reasonable and nonpositional during the collaborative process, would be the last advocate a clients wants in court.

Also on a practical level, it was realized, early on, that an attorney can't proceed nonadversarially and simultaneously protect a client's litigation positions. Doing so presents irreconcilable conflicts of interest and, in my opinion, puts the attorney in an impossible bind: an attorney can't be collaborative and simultaneously preserve adversarial positions, as to do one often negates the other. Thus, in my opinion, it is highly ironic that the drafters of Opinion 115 find cooperative practice inherently ethical while having problems with the disqualification clause.[8]

The recognition that an attorney cannot realistically collaborate and, at the same time, litigate, led to the creation of the four-way agreement that included the disqualification clause. This is a powerful acknowledgement that if collaboration fails, the parties mutually agree they will use different counsel to litigate, committing both clients and attorneys to earnest collaboration. Attorneys signed the agreements both to show their personal commitment to the nonadversarial process, as well as to acknowledge the paradigm shift that collaboration represents.

Conflict of Interest

Opinion 115 determined that collaborative representation creates a conflict of interest between the attorney's duty to do what is best for the client and the lawyer's obligation to a third party to withdraw if collaboration fails. However, this determination for-

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agreed to disqualify their respective lawyers, what is the point of the lawyers' identical agreement?

Conclusion

My suspicion, based in part on anecdotal evidence, is that most practitioners have been engaging in the cooperative model sanctioned by Opinion 115, not Collaborative Law. If a lawyer is indeed practicing Collaborative Law, a "quick fix" exists in the form of excising the disqualification provision from the four-way agreement. Better still, from my perspective, cut the lawyer out of the contract equation all together. After all, as stated in note 11 of the Opinion, the parties can accomplish the exact same goals, including creating incentives for settlement, generating a positive environment for negotiation, and fostering a continued relationship without violating the Colorado Rules of Professional Conduct.

Notes

1. Although the Collaborative Law process most frequently is employed in the family law context, its application is by no means limited to family law. *See* Spain, "Collaborative Law: A Critical Reflection on Whether a Collaborative Orientation Can Be Ethically Incorporated into the Practice of Law," 56 *Baylor L.Rev.* 141-42 (2004).

2. I am a member of the Colorado Bar Association (CBA) Ethics Committee. However, the opinions and analysis herein are my own and do not necessarily reflect the opinions of the Committee.

3. *See* CBA Ethics Opinion 115: Ethical Considerations in the Collaborative and Cooperative Law Contexts (adopted Feb. 24, 2007), 36 *The Colorado Lawyer* 15 (May 2007), available at http://www.cobar.org/index.cfm/ID/386/subID/10159/CETH/Ethics-Opinion-115:-Ethical-Considerations-in-the-Collaborative-and-Cooperative-Law-Contexts,-02/24.

4. Lande and Herman, "Fitting the Forum to the Family Fuss: Choosing Mediation, Collaborative Law, or Cooperative Law for Negotiating Divorce Cases," 42 *Fam. Ct. Rev.* 280, 283 (2004) (internal quotations omitted):

> Virtually all collaborative law leaders and practitioners believe that the disqualification agreement is the irreducible minimum condition for calling a practice collaborative law.

See also New Jersey Advisory Committee on Professional Ethics, Collaborative Law, Op. 699 (Dec. 12, 2005):

> It is deemed critical to the success of the collaborative law process that the lawyers contractually limit the scope of their representation to achieving resolution through non-adversarial processes. . . .

See also Spain, *supra* note 1 at 143:

> Despite the variety of definitions of collaborative law, it has been suggested that there is a universal and necessary element for the model of practice referred to as collaborative law: A written commitment from each party's counsel disqualifying them from representing their client against the other in court.

5. Lande, "Possibilities for Collaborative Law: Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering," 64 *Ohio St. L.J.* 1315, 1332 (2003), *citing* Tesler, *Collaborative Law: Achieving Effective Resolution in Divorce Without Litigation* (American Bar Association (ABA) Section of Family Law Manual, 2001).

6. Arnold, "Collaborative Dispute Resolution: An Idea Whose Time Has Come," 16 *A.L.I.-A.B.A.* 379, 381, 382-85 (2000), available at http://www.sudburycollaborativelaw.com/pdf/collaborative_dispute_resolution_an_idea_whose_time_has_come.pdf.

7. Empirical evidence suggests that Collaborative Law is effective in resolving disputes without the need for litigation. Macfarlane, "The Emerging Phenomenon of Collaborative Family Law (CFL): A Qualitative Study of CFL Cases" (2005), available at http://canada.justice.gc.ca/en/ps/pad/reports/2005-FCY-1.

8. Peppet, "Colorado Ethics Opinion 115: Next Steps for Colorado's Collaborative Lawyers," 36 *The Colorado Lawyer* 37 (Sept. 2007).

9. *See, e.g.*, New Jersey Advisory Committee on Professional Ethics, *Collaborative Law*, Op. 699 (Dec. 12, 2005); Kentucky Bar Association Ethics Comm., Op. E-425 (June 2005); Hodor and Roth, *The Florida Bar Handbook Supp.* (2006), Ch. 24, "Collaborative Law." However, several states' ethics opinions, including Minnesota's and Pennsylvania's, have cautioned against the potential conflict of interest. *See* Minnesota Office of Lawyers Professional Responsibility, Advisory Op. (March 12, 1997); Committee on Legal Ethics and Professional Responsibility of the Pennsylvania Bar Association, Informal Op. 2004-24 (May 11, 2004).

10. ABA Standing Commission on Ethics and Professional Responsibility, Formal Op. 07-447: Ethical Considerations in Collaborative Law Practice (issued Aug. 9, 2007), available at http://cocollaborativelaw.com/Portals/0/EthicsOpinionABACL2007.pdf.

11. The Colorado Supreme Court has approved revisions to the Colorado Rules of Professional Conduct, which will go into effect on January 1, 2008. Where the old version of Rule 1.7 was triggered by the mere possibility of a conflict, the new version of Rule 1.7 speaks to a "significant risk" that the representation of the client will be materially limited by responsibilities to a third party. The question under the new rules, therefore, becomes whether a "significant risk" exists such that the Collaborative Law practitioner's ability to represent his or her client will be materially limited by the disqualification agreement. I contend that such significant risk in-

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gets that the client limited the attorney's representation to collaboration in the first place, which clients have the right to do. A client hiring a collaborative attorney does so knowing that disqualification of the attorney from representing them in future litigation is one of the conditions inherent to collaborative practice. Thus, it is the client whose limitation directs the disqualification, as opposed to the obligation to the third party, which is the position taken by the recently released ABA ethics opinion upholding collaborative practice as ethical.[9] Although Opinion 115 drew a distinction between the clients agreeing among themselves to the disqualification of their attorneys, as opposed to the disqualification clause being in the four-way agreement, I submit that this is a distinction without a material difference. The obligation to withdraw exists for the attorney in both instances, leading to no practical difference. Attorneys cannot knowingly pursue a course of action that violates a valid contractual obligation their client has; the other client can enforce a two-way agreement, both facts leading to the conclusion that the two-way agreement is just as effective a bar to future representation as is the four-way agreement.

Both the Colorado opinion and the more recent ABA opinion agree that the attorney's duty of loyalty to the client, under Colo. RPC 1.7, is in conflict with the attorney's future disqualification from litigation representation if collaboration fails. However, the ABA opinion asserts that the conflict is overcome by informed consent, whereas the Colorado opinion takes the position that it is an unwaivable conflict. I have difficulty with Colorado's position. First, taken to its logical extreme, Opinion 115 suggests that a client is not competent to opt for unbundled representation if it precludes the lawyer litigating for them.

Second, given the prevalent case law,[10] both in terms of the nature of conflicts that can be waived and the potential adverse consequences for clients, it is very difficult to see how collaboration could possibly be a conflict that is "unwaivable" pursuant to Colo. RPC 1.7(c) (the "objective attorney" standard) under prevailing Colorado case law. Some of those cases suggest that as long as a client has informed consent, even fairly remarkable conflicts of interest can be waived. (My particular favorite is one in which the client faced life imprisonment but was able to waive the conflict of his defense attorney dating the prosecuting attorney.)

Informed Consent

Opinion 115 also gives important commentary on issues of informed consent, clients under disability, and duties of attorneys to regard termination of representation that all attorneys should heed, particularly in light of the pressures put on clients to settle. In the collaborative context, compromise occurs after all options have been identified and evaluated, with the parties' needs being on the table for both to consider, and with the support of both attorneys and sometimes coaches as to the repercussions. In the litigation context, last-minute compromise frequently occurs "on courtroom steps" with enormous pressures on clients either to settle or "face a judge." If concerns arise about pressure on clients to settle in collaboration, the latter situation is even more troubling, and all divorce attorneys should read Opinion 115 with caution.[11]

Conclusion

Collaborative representation is very different from litigation representation. It should not be a surprise that those who identify ethical representation with vigorous trial advocacy are wholly uncomfortable with the collaborative paradigm shift. That being said, Collaborative Law is an option that offers the best of alternative dispute resolution with the comfort of legal advocacy. CBA Ethics Opinion 115 notwithstanding, collaboration likely will continue to be in demand and to grow in popularity.

Notes

1. CBA Ethics Opinion 115: Ethical Considerations in the Collaborative and Cooperative Law Contexts (adopted Feb. 24, 2007), 36 *The Colorado Lawyer* 15 (May 2007), available at http://www.cobar.org/index.cfm/ID/386/subID/10159/CETH/Ethics-Opinion-115:-Ethical-Considerations-in-the-Collaborative-and-Cooperative-Law-Contexts,-02/24.

2. Opinion 115 condoned the use of a contract between the parties only, referred to as a two-way contract, in which the clients could agree to dismiss their attorneys if collaboration fails. *See id.* at n.11.

3. Matt asserts that this means I have been practicing cooperative law. With all due respect, Matt is incorrect. Opinion 115 identifies cooperative law as collaborative law without the disqualification clause. Those of

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deed exists, because anytime the Collaborative Law process fails, the lawyer's ability to litigate is impaired by the disqualification agreement. The ABA disagrees. ABA Formal Op. 07-44 concludes:

> When a client has given informed consent to a limited representation to collaborative negotiation toward settlement, the lawyer's agreement to withdraw if the collaboration fails is not an agreement that impairs her ability to represent the client, but rather is consistent with the client's limited goals for the representation.

ABA Standing Commission on Ethics and Professional Responsibility, Formal Op. 07-447: Ethical Considerations in Collaborative Law Practice at 4 (issued Aug. 9, 2007), available at http://cocollaborativelaw.com/Portals/0/EthicsOpinionABACL2007.pdf.

12. *See* Colo. RPC 1.7(b), (c), and cmt.

13. In this regard, the Comment to Rule 1.7 provides:
The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

14. Lande, *supra* note 5 at n.70. *See also* Peppet, *supra* note 8.

15. Marfarlane, *supra* note 7 at § 1(E)(iii).

16. *Id. See also* Peppet, *supra* note 8.

17. *See* CBA Ethics Opinion 115, *supra* note 3.

18. Peppet, *supra* note 8.

19. *See* CBA Ethics Opinion 115, *supra* note 3.

20. *Id.* at 21. ■

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us using two-way agreements—that is, contracts between the clients only to which we are not parties—still rely on the disqualification clause in that contract to prohibit future representation by the attorneys if the case goes south. We, as the lawyers, are still disqualified from future courtroom representation. Cooperative law, as defined by the Colorado opinion, would not preclude the same attorneys from participating in what could be assumed to be "nice" litigation, is anathema to those of us practicing collaborative law.

4. The classic example is two parents who have bitterly contested custody—by tearing apart each other's parenting skills in court—who then have to attempt to amicably coparent in the best interests of their children. Often, this only creates ongoing postdecree litigation as aggrieved parties continue to try to remedy the first bad outcome.

5. Many parents go into divorce wanting, as their chief objective, a resolution that will protect their children's interests. Thus, protecting the family is the interest of the client and the divorce practitioner must always remember that it is the client, not the attorney, who gets to define what the client's needs are.

6. Consider how you could effectively represent a client in court, if you have taken positions in collaboration that can be used against you in court. One example might be agreeing to temporary maintenance that a spouse can't afford and that is much higher than the formula, to tide a spouse over the initial separation, thereby exposing that spouse to a claim that the maintenance represents what they can "afford."

7. For a discussion of Cooperative Law, *see* Lande, "Principles for Policy Making about Collaborative Law and other ADR Processes," 22 *Ohio St. J. on Disp. Resol.* 3, 12 n.59 (2007). *See also* Fairman, "A Proposed Model Rule for Collaborative Law," 21 *Ohio St. J. on Disp. Resol.* 73, 75 n.14 (2005).

8. *See id.* Many positions and disclosures made in collaboration never would be made in a litigation context and probably couldn't be, from a malpractice perspective. This is precisely for the same reasons that mediation is confidential.

9. American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Op. 07-447: Ethical Considerations in Collaborative Law Practice (issued Aug. 9, 2007), available at http://cocollaborativelaw.com/Portals/0/EthicsOpinionABACL2007.pdf.

10. *See Tyson v. District Court*, 891 P.2d 984 (Colo. 1995); *People v. Preciado-Flores*, 66 P.3d 155 (Colo.App. 2003).

11. Particularly in light of the recent case *In re the Marriage of Sorensen*, __ P.3d __, 2007 WL 1557868 (Colo.App. 2007). ■