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PEPPERDINE DISPUTE RESOLUTION LAW JOURNAL

Collaborative Practice Mediation: Are We Ready to Serve this Emerging Market?

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I. INTRODUCTION+

Collaborative Practice (also known as Collaborative Law) is fast becoming a viable alternative to litigation internationally. When needed to overcome an impasse, collaborative professionals engage mediators and, in some cases when the issue is limited, they involve arbitrators. In order to serve as the neutral ADR provider in such matters one needs to demonstrate an understanding of the process. For a collaborative team to select a third party neutral facilitator in whom they will have confidence, they will want to know that the mediator has received training in interest-based negotiation and preferably in Collaborative Practice itself. They will be looking for

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+ Just keeping up is a problem for all of us. My background as an attorney and judge is based on the adversarial system. Alternative Dispute Resolution processes were a breath of fresh air in the stuffy climate of litigation. But I was surprised to hear my colleagues discuss client interests, solution-oriented and interest-based processes. I am learning that to stay abreast of events in the ADR field I must continue to learn new methods and models of communication and conflict resolution. This article is the product of discussions in our office with Petra Novotna, a senior law student from Slovakia and law clerk in our office, Gay G. Cox, an attorney and leader in the Collaborative Law movement, and myself, a JAMS panelist struggling to keep up. I hope it is helpful. Honorable P. Oswin Chrisman

people skilled in managing joint meetings effectively, where all the parties to the dispute can meet face-to-face.

1. What is Collaborative Practice and When is it Used?

Collaborative Practice is a non-adversarial dispute resolution process in which parties commit themselves to collaborate in order to reach a mutually acceptable agreement without court intervention.[2] It was created by Stuart Webb, a Minnesota family lawyer, who introduced it as a new approach to divorce.[3] Parties and their respective counsel participate in joint meetings to achieve unique settlement of their dispute rather than being forced to follow a judicially-ordered solution. However, if either one of the parties decides to bring the disputed matter to the court for a decision, both attorneys must withdraw and they are disqualified from any further involvement in the case.[4]

The clients and their lawyers sign a participation agreement with the purpose of settling their legal disputes through the collaborative process.[5] Parties agree to disclose all relevant documents and information related to the disputed issues and to treat everybody with respect, avoiding threats and disparagement.[6] Once a participation agreement is signed, clients with their lawyers proceed with informal discovery to the extent of the parties' desires. Instead of taking positions, they negotiate in a way that recognizes interests and goals, as well as the emotional issues of each side. Both parties retain the advantage of legal advice provided by their respective lawyers. Unlike the courtroom battle, lawyers do not fight to get what their clients want, but facilitate the negotiations in order to achieve results satisfactory to everybody. Win/lose outcomes of litigation are replaced by win/win or rather acceptable/acceptable solutions.[7] In addition, parties may hire neutral experts, such as business and real estate appraisers, accountants, coaches or mental health professionals, who can help them with complex issues.[8] Both parties benefit from a team of professionals who work toward maximizing settlement probability and minimizing or eliminating conflict.

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2. PAULINE H. TESLER, COLLABORATIVE LAW: ACHIEVING EFFECTIVE RESOLUTION IN DIVORCE WITHOUT LITIGATION 7 (2001).

3. *Id.* at xix, n.1.

4. *Id.* at 4.

5. *Id.* at xx.

6. *Id.* at 5.

7. TESLER, *supra* note 2, at xxi.

8. *See* TEX. FAM. CODE ANN §§ 6.604(c)(3), 153.0072(c)(3) (Vernon 2002 & Supp. 2005); *see also* JANET P. BRUMLEY, DIVORCE WITHOUT DISASTER: COLLABORATIVE LAW IN TEXAS 61-63 (2004).

Collaborative Practice is a solution-oriented and interest-based process. It has shown pre-eminent success in resolving family law matters.[9] The many advantages of Collaborative Practice include: avoiding the litigation battle; keeping control of the process and the outcome; creating unique solutions; providing for privacy, flexibility, and direct negotiations; preserving valued relationships; and reducing the legal costs. Furthermore, Collaborative Practice is unique in its ability to also provide clients with the benefit of legal advice and advocacy. Accordingly, Collaborative Practice is a valuable method of resolving private domestic matters, while maintaining the potential to succeed in other types of civil cases as well.[10]

A Collaborative Law case can be compared to a journey on a boat through whitewater rapids.[11] Parties and their respective lawyers are all together in one boat. Lawyers are piloting the boat, because they are familiar with the river and know how to navigate. Their role is to assist the client in staying dry throughout the entire trip, especially when something unexpected occurs. In the passages where the river is smooth and calm it won't take much effort to stay in the boat. But everybody in the boat knows they will have to work together as a team in order to survive the perilous periods of rapids and rocks. During these passages, passengers may lose some of their possessions in order to preserve the others. Lawyers work as a team in navigating the river successfully to its end, because they know it cannot be done without cooperation. By working together, they meet the goals of their respective clients – staying safe and dry in the boat until the end of their journey and focusing on saving the possessions most precious and valuable.

> The collaborative lawyers are the pilots . . . [t]hey know how to keep the boat upright and heading downstream; they know the river. But they cannot pilot the boat without the active paddling of the clients. They cannot avoid whitewater rapids entirely, nor can they completely eliminate the risks associated with the venture. They help each client through the legal journey . . . .[12]

9. TESLER, *supra* note 2, at 7.
10. *Id.* at 7-8.
11. *Id.* at 207.
12. *Id.* at 208.

2. *What are the Main Differences Between Collaborative Practice and Other Dispute Resolution Methods?*

Besides the procedural requirements, such as entering into a Collaborative Practice Participation Agreement, there is one obvious difference: maintaining control of the outcome and the entire process.

> Nothing feels more 'out of control' than having one's destiny decided by a trier of fact based on information presented ably or not so ably by a lawyer over whom one has no control. It is a common experience for a witness to feel helpless when important areas of inquiry and opportunities to explain are missing from the testimony because no one asked.[13]

In arbitration, a neutral arbitrator or panel of arbitrators serves as the fact finder for the purpose of making a determination of the outcome. Parties have no control over the decision which is based on evidence presented during the arbitration process. In a caucus-style mediation, parties put the burden of the negotiations on the mediator who shuttles back and forth between the parties, each in a separate room. Although this mediation style has proven to be highly successful in resolving various types of disputes, parties sometimes feel like they are losing control over the process.

> Some clients (and their counsel) experience a feeling of loss of control in mediations conducted entirely in the caucus style . . . because one must completely trust the mediator to convey effectively and persuasively the rationale for one's proposal. In contrast to the caucus model . . . , the joint session [mediation] model is also problematic for many clients.[14]

Such face-to-face mediations many times occur when attorneys are not present and therefore lack the advantage of immediate legal advice. Collaboration is an empowering, client-centered approach where responsibility for resolution of the conflict remains on the clients' shoulders. Therefore, parties exercise full control over the entire process. Also, since their decisions have legal consequences, the lawyers are there to help them to create enforceable agreements.

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13. Gay G. Cox & Robert J. Matlock, *The Case for Collaborative Law*, 11 TEX. WESLEYAN L. REV. 45, 47 (2004).

14. *Id.* at 48.

3. *What Skills Must Collaborative Lawyers Have? Is the Training Different in Regards to the Training of Other ADR Professionals?*

There is an advantage if a collaborative lawyer has been trained in interest-based negotiation, conflict resolution skills and the collaborative process. Also collaborative lawyers appreciate if the lawyer who is their collaborative counterpart (the lawyer for the other party) in the collaborative case is trained in the collaborative model. Collaborative lawyers refer to the need to make a change from the adversarial approach to a collaborative attitude as the "paradigm shift" necessary to effectively practice collaboratively. Many collaborative practitioners made this necessary shift early in their careers as a result of mediation training and experience. In her book, *Divorce without Disaster: Collaborative Law in Texas*, Janet Brumley writes:

> It has been my experience that if the other attorney is untrained, but is a cooperative person with whom I have handled prior cases and built up mutual trust, the collaborative divorce can proceed smoothly. In this situation, I will have to do most of the work – not because the other lawyer isn't willing, but because he or she doesn't know what needs to be done. If the other attorney is not particularly cooperative and is untrained in collaborative law, using the collaborative process can be difficult because so much time is spent overcoming the other attorney's aggressive attitude.[15]

Any ADR professional skilled in interest-based negotiation will recognize the basic steps of a collaborative case.

The primary vehicle for achieving agreement in the collaborative family law process is interest-based negotiation, and it is the collaborative attorney's job to guide his or her client through that process. Facilitating interest-based negotiation includes five major steps:

1. Identifying and communicating interests.
2. Defining the issues.
3. Obtaining, organizing and analyzing the information needed to consider the issues.
4. Generating resolution options.
5. Evaluating the resolution options in light of interests and reaching agreement.[16]

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15. BRUMLEY, *supra* note 8, at 14-15.

16. Norma Levine Trusch, *Multidisciplinary Collaborative Law, a paper presented to the 2004 Advanced Family Law Course in San Antonio, Texas on August 12, 2004, available at* htttp://www.collablawtexas.com/article_multidisciplinary_collaborative_law.cfm) (quoting the first draft of the Collaborative Family Law Council of Wisconsin's Interdisciplinary Training Manual).

Collaborative Practice takes these basic tools and integrates them within a structure that offers a unique method of problem-solving.

> . . . CFL [Collaborative Family Law] is the formalization of a new settlement model. Inherent in the paradigm shift is the requirement that lawyers learn new models of communication and conflict resolution in order to meet the needs of clients. Lawyers in the CFL case focus on the nature of the conflict and work within a very specific structure to manage the conflict and transform it into collaboration. The CFL process replaces Rules of Evidence and Procedure with specific protocols and choreography. Clients are given significant opportunity to own both the process and its outcome.
>
> The lawyer in the CFL process helps the client to articulate his or her interests, assists in the creation of a broad spectrum of options to meet the interests articulated, assists in evaluating those options based upon several criteria, and helps the client focus on the consequences of choosing various options. A part of the evaluation process is determining how an option compares with a court-generated outcome. . . . Court settlement ranges are, however, only one set of options available . . . . The brainstorming process and the assistance of counsel allow clients to arrive at creative and imaginative solutions.[17]

4. *Should Collaborative Practice be Part of a State's ADR?*

Ideally, each state will find its own best way to provide a place for Collaborative Practice that shields it from the procedural requirements imposed on pending lawsuits that make it more difficult. Some venues have "rocket dockets" that require any matter which is filed in the court to adhere to time tables that are unrealistic for those who are going at their own agreed pace. To avoid trial settings, dismissals, and discovery deadlines imposed by court scheduling orders, Texas became the first state to adopt a collaborative law statute in 2001 for use in family law matters.[18] In other jurisdictions and causes of action, the same ends are accomplished by contract and local rules and practices that are approved by the judiciary.[19] It is expected that the method will be codified in many jurisdictions in the coming years, but until then, it is flourishing without statutory authority.

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17. Sherri Goren Slovin, *The Basics of Collaborative Family Law: A Divorce Paradigm Shift*, 18:2 AMER. J. OF FAM. LAW 74 (Summer 2004).

18. TEX. FAM. CODE ANN §§ 6.603, 153.0072 (Vernon 2002 & Supp. 2005).

19. The Hon. W. Ross Foote, retired judge of Rapides Parish, Louisiana, in an interview for the Collaborative Review, stated "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." Jennifer Jackson, *The Hon. W. Ross Foote: Collaboration From the Bench*, 7:1 COLLABORATIVE REVIEW 6 (Spring 2005).

5. What Are the Advantages of Using Collaborative Practice in Resolving Non-Family Law Matters?

One of the most valuable elements of Collaborative Practice is that it preserves existing relationships. Unlike humiliating litigation war, joint sessions are held in an atmosphere of respect, integrity and professionalism, which makes future cooperation possible.[20] Collaborative process enables parties to move forward and to remain positive. Moreover, disclosure of all information reflects the parties' good faith to cooperate and willingness to save the relationship.[21] No party may take advantage of mistakes that occur during the process; such mistakes must be disclosed and corrected.[22] In addition, at the end of the process, the parties can look back without fear that they would not like what they would see. Besides saving the relationship by minimizing or eliminating anger, alienation, and regret, the collaborative process preserves the parties' self-esteem and respect.

6. What Are the Recent Developments in Collaborative Practice?

Collaborative negotiations take place at so called "four-way meetings" (often simply referred to as joint meetings or joint sessions) with both parties and their respective lawyers present.[23] Lawyers and parties have recognized the benefits of the input of various professionals attending the sessions when particular issues are being discussed. As more people are being brought into the sessions, the use of the term "four-way meeting" is becoming obsolete. Allied professionals help parties to remain focused on their objectives and provide necessary information to broaden the range of possible solutions. Having only one neutral expert for a particular issue accepted by both parties saves the additional costs and eliminates the disadvantages of a nonobjective expert.[24] In family law matters, the benefits of mental health professionals and coaches, neutral financial advisors, accountants, parenting and child specialists, real estate appraisers and others are recognized and appreciated.

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20. Protocols of Practice for Collaborative Lawyer, http://www.collaborativelaw.us/articles/TCLC_Protocols.pdf (hereafter Civil CL Protocols), Chapter 5; Protocols of Practice for Collaborative Family Lawyers, http://www.collablawtexas.com/resources/rec_docs/Protocols_of_Practice_1-21-2005.pdf (hereafter Family CL Protocols), Chapter 5.

21. Civil CL Protocols & Family CL Protocols, *supra* note 20, at §§3.02, 5.02.

22. Civil CL Protocols & Family CL Protocols, *supra* note 20, at § 5.05.

23. Civil CL Protocols & Family CL Protocols, *supra* note 20, at Chapter 7.

24. BRUMLEY, *supra* note 8.

7. What Cases Besides Family Law Matters May be Potentially Resolved Through Collaborative Practice?

In every matter where preserving the relationship between the parties and protection of privacy is an issue, Collaborative Practice may help. Thinking about these two key advantages of Collaborative Practice, one realizes that family law is certainly not the only field that can benefit from it. Collaborative law could also benefit cases requiring the resolving of disputes between employers and employees, the handling of probate cases, settling of conflicts when religion is involved, and many more. Lawrence R. Maxwell, the President of Texas Collaborative Law Council, an organization with the mission of promoting the use of the collaborative process for resolving civil disputes, says:

> The collaborative process is the business imperative of our time. The process captures the exponential power of cooperation. In our fast moving, complex and demanding world, resolving disputes in litigation is simply too costly, too painful, too ineffective and too destructive. It just makes sense to focus on the interests and goals of the parties, have a full and complete disclosure of relevant information, avoid the costly discovery fights in litigation and communicate face to face rather than through intermediaries.[25]

In Maxwell's article, *The Collaborative Dispute Resolution Process is Catching On In the Civil Arena*, he suggests these situations as candidates for collaborative process: when an employee feels he or she has been unfairly terminated; when a vendor fails to make timely delivery of ordered goods, but the seller and the buyer want to preserve a long standing relationship; when business and professional partnerships fall apart; when a claim is made on the basis of professional malpractice involving lawyers, health care providers, accountants, architects and engineers; in intellectual property issues; and in construction projects, conflicts involving the owners, general and sub-contractors, architects, suppliers, sureties and liability insurance carriers.

8. What Needs to be Done for Collaborative Practice to be Used in Other Than Family Law Matters?

A task force of the International Academy of Collaborative Professionals (IACP) met in Chicago in August 2005, to explore how to best promote the use of this new approach in all areas of civil jurisprudence. The

25. Lawrence R. Maxwell, Jr., L.L.B., The Collaborative Dispute Resolution Process is Catching on in the Civil Arena, presented to IACP Core Collaborative Practice Skills Institute in Dallas (June 2005).

vision of IACP is to "transform how conflict is resolved worldwide through Collaborative Practice."[26] The group firmly held to the Collaborative Commitment—that the participants must sign a participation agreement requiring the lawyers to withdraw if settlement is not reached—as a basic universal premise of all Collaborative Law and Collaborative Practice cases. They recognized that some adaptations in lesser protocols may be necessary as the process expands into other areas of law. The group decided that the immediate emphasis should be placed on expanding the process into the probate and estate planning field, the health care industry (especially into medical malpractice matters), and the religious communities who disfavor civil litigation. Networking is being done to get the word out in each of these target groups.

Meanwhile, training is being conducted. The Texas Collaborative Law Council has sponsored three two-day trainings for civil practitioners. Training focusing on probate law has been held in Houston and Southern California. The Massachusetts Collaborative Law Council is a leader in pressing for widespread use of collaborative principles.[27] It will take a critical mass of trained professionals, eager to practice collaboratively, to lead the reformation of civil law that Collaborative Practice principles offer.

9. *Can Other ADR Methods be Used With Collaborative Practice as a Support of the Process?*

> When difficult issues are being discussed and collaborative negotiations come to an impasse, mediation can be used to prevent the termination of the process. This approach has proven to be highly successful, especially when dealing with emotional issues. [I]nevitably there will be issues charged with high levels of emotional investment, driven by the parties' fears and conflicting values, that come to an impasse point in collaboration. The clients who are motivated to remain in the process want to find a way out of this deadlock. This is where mediation becomes a process solution for the parties.[28]

In July 2005, author Gay G. Cox conducted an email poll of members of the Dallas Alliance of Collaborative Family Lawyers (DACFL). Eight collaborative lawyers responded and all stated that clients should definitely commit to try mediation before they terminate the process. Seven of the

26. International Academy of Collaborative Professionals, www.collaborativepractice.com (last visited May 11, 2006).

27. Massachusetts Collaborative Law Council, www.massclc.org (last visited May 11, 2006).

28. Gay G. Cox, *Mediation: A Vital Complement to the Collaborative Law Process*, 20:1 THE TEXAS MEDIATOR (2005).

eight respondents had served as an advocate in mediation; six of them served as a mediator. Of eighteen mediated cases reported by the respondents as advocates and ten cases reported by them as mediators, none was terminated after mediation of the collaborative case. The use of mediation served to either resolve the matter or to put the parties back on track so that they could continue their negotiations without resorting to litigation. Admittedly, the cases that were mediated were a small fraction of the cases the practitioners had handled. None of the respondents had resorted to arbitration of any issues in the cases they had handled.

Using the metaphor of a whitewater boat trip, a mediator is the person brought on board to sit in the back of the boat, guiding the boat from behind, and controlling the rudder which keeps everything on an even keel. With the agreement and cooperation of all the people in the boat, he can change the course of the boat in the direction most preferable at the time. The mediator is the person who helps to lead the boat safely to the end, like a river boat pilot who steers the boat into the harbor. You don't need him on every trip; if the river is mostly calm, lawyers together with the parties can reach the finish by themselves. But when the parties deal with a dangerous river with lot of whirlpools that may pull the boat under the water, four people in the boat may not be enough to survive. That is the time when the mediator should be involved. An arbitrator may be necessary, if they come to a fork in the river and need someone to make a decision about where to go next. Arriving safe and sound with the mission accomplished satisfies everyone, and all learn from the adventure of the journey.

10. What Requirements Should a Mediator Meet When Mediating a Collaborative Case?

Mediators who wish to expand their business to include collaborative cases should be trained in the collaborative model. When they were asked the question: "Do you require a mediator to be collaboratively trained when you are an advocate in a collaborative case that needs mediation?" six of eight respondents from DACFL answered "yes". Mediators in collaborative cases should focus on client empowerment, assure an interest-based approach, emphasize creativity and participate as part of the team. To the DACFL poll, Janet P. Brumley responded, "They [mediators in collaborative cases] should be well-versed in both Collaborative Practice and interest-based negotiation. Their goal should not be the typical goal of 'settlement at any cost' but rather a willingness to accompany the parties wherever they need to go to find the peace and acceptance of a mutually beneficial

settlement."[29] Thomas C. Railsback commented, "I think a mediator of a collaborative law matter should be familiar with interest-based negotiation. If a mediator uses some of the traditional 'risk analysis' approaches (e.g. 'what's going to happen if you go to court?'), it can impede or break down the process."[30] A majority of respondents from DACFL consider an interest-based approach as opposed to a risk analysis approach very important, the very essence of mediating a collaborative case. However, some stated that using risk-analysis may help in some cases.

11. When Should Parties Agree to Mediation as an Option for Resolution of a Collaborative Case?

There are two options: at the time of the signing of the participation agreement or at some later time, usually when the parties realize that they need mediation to prevent an impasse. Four DACFL respondents prefer to include a mediation requirement in the participation agreement to assure that everything will be done to prevent the termination of the collaborative process. Two respondents stated that there is no need to agree to mediate until the mediation is really necessary. Angeline Lindley Bain stated, "I think there is no need to agree to mediate until the point where you realize you need one. Many collaborative cases do not need mediation."[31] Another issue is naming the mediator for a collaborative case. Six respondents agreed that a mediator for a collaborative case should be named after the parties realize what issues need to be mediated, so it is clear what parties expect from a mediator. Then it is more probable that a mediator chosen will match the parties' personalities.

A majority of DACFL respondents think that conducting a pre-mediation conference with the professionals and the mediator prior to the mediation could help, though none of them used one. Such a pre-mediation conference may be helpful in defining "hot buttons" and possible ways to approach them. "[In a pre-mediation conference the professionals may discuss] the parties' blocks or walls, the parties' goals, interests and concerns, areas of impasse, brainstorming ideas of how to work through impasse and the format for the mediation. Also, [they can] . . . update the mediator on the basic numbers and facts involved."[32]

29. E-mail from Janet P. Brumley to author (on file with author).
30. E-mail from Tom Railsback to author (on file with author).
31. E-mail from Angeline Lindley Bain to author (on file with author).
32. E-mail from Kevin R. Fuller to author (on file with author).

12. Who Should Attend a Collaborative Mediation? Should All Team Members be Invited to Attend?

It depends on the case, but usually all team members who are needed to help parties to understand the disputed issues and discover possible solutions should be invited to a collaborative mediation. Everybody who has something to offer should be present, which differs from case to case. "Everyone the clients need to understand issues and make choices while feeling safe [should attend]. For some people, that is the whole team. For others, it is only their lawyers." Jody L. Johnson expressed her opinion "that the team members should come, depending on the issues. If the issues are only child-related and not child support the financial [expert] wouldn't come. I would see the coach coming at all times."[33] A majority of DACFL respondents agreed that a mediator should be considered as a member of a collaborative team who can facilitate resolution of difficult issues as they arise. However, most of them prefer a coach to be a case manager, if such a role is assigned.

13. What Advice do you Expect a Collaborative Lawyer to Give His or Her Client When a Collaborative Case is to be Mediated?

Before the mediation of a collaborative case begins, it is helpful for the client to be prepared for the process into which he or she is heading. A mediator would expect a collaborative lawyer to have spent time with his or her respective client in order to:

- Review with the client the client's goals, as well as all mutual objectives.
- Come prepared to be open minded, to welcome fresh ideas and to evaluate the ideas that come up – hopefully, there might be something no one has ever thought of.
- Suggest that the client match energy and time during the mediation for the most important goals and desired outcomes; spend most of the effort on resolving one's high priority issues.
- Be certain that all information needed to reach the agreement is obtained prior to mediation; all relevant documents must be available.
- Recognize in the beginning all things that need to be settled; do not wait to raise a particular issue until the end, when it may ruin the whole settlement.

33. E-mail from Jody L. Johnson to author (on file with author).

- Be ready to communicate with the mediator and coach(es) present.
- Expect the advocates to give advice only when it is needed to explain legal consequences or suggest what might work better; do not expect the lawyer to talk instead of the client.
- Realize that the negotiation is not based on positional bargaining; the discussions are not considered as offers and counter offers; the dynamics of the settlement do not require questions like: Whose request was it?; the other party may reach the same solution with less resistance if they don't perceive it as a position their counterpart is demanding.
- Listen and clarify with questions to help the other party to better express themselves and to find out what they really want and why; both parties need to feel that the agreement is acceptable for them and meets their needs.
- Stay polite and respectful; do not show disapproval even with body language or facial expression; be prepared to deal with the "hot buttons."
- Be prepared for the joint session but be ready to work separately as well; there might be situations where a caucus style is better suited, such as to avoid the pressure of the other party being present and evaluating your responses.
- Afford yourself time for documentation after negotiation is done; be ready to adjourn the meeting and be flexible to complete the process; there is no artificial deadline, no trial date; pace oneself.
- Understand that when one is stuck on the hard issues, the mediator may suggest a "mediator's proposal," what he or she thinks the parties COULD agree to; understand that it is NOT what the court would do or what the mediator thinks the parties SHOULD do; the mediator is neutral.
- Be willing to include the neutral experts and allied professionals in the mediation sessions in order to increase the probability of success.

II. CONCLUSION

If the collaborative professionals, including the mediator, are well-trained with skills that promote interest-based negotiation, and if the clients are well-prepared for the type of mediation that will best benefit them in their goal of a mutually acceptable settlement that does not contemplate

resorting to court intervention, then mediation will enhance the probability of resolving even the most complicated and challenging cases. The mediator will enjoy the experience of working with other equally skilled collaborative negotiators. The teamwork will likely pay off with agreements that the clients will value and honor. If agreement is not reached, the clients understand that they "own" the problem and its solution and they will then accept that they either need the intervention of an arbitrator, or as a last resort, a court to settle their differences. They will know that they have tried everything they could think of that might have resolved their matter amicably and now they should have no regrets about "trying" litigation. Mediators with specialized collaborative skills will fill a niche that will be desired by collaborative professionals. Positioning oneself to serve this new market makes good business sense.