Collaborative Law Committee - Quarterly Report - March 27, 2014

The Collaborative Law Committee holds semi-monthly meetings via telephone conference on the fourth Tuesday of the month at 5:00 pm eastern time. Notice and the meeting agenda are posted on the Listserv to all Committee members. The meetings include an educational component in addition to the business of the Committee. Minutes of the meetings are maintained and circulated to Committee members. Guests are welcome to attend the semi-monthly meetings and may obtain dial in information by contacting one of the Committee’s co-chairs.

Members of the Section’s Council are welcome to attend Committee meetings and participate in the activities of the Collaborative Law Committee.

In 2011, the Committee developed a Mission Statement (Exhibit “A”) and in 2013 it updated previously established Sub-committees and Liaisons (Exhibit “B”) to carry out each element of the Mission Statement.

The Committee co-chair sends a personal welcome to new members, with the Mission Statement, Sub-committees and Liaisons and minutes of the previous meeting. The Committee currently has approximately 100 members and the membership continues to increase, thanks to efforts of active Committee members in encouraging their colleagues to join and participate in efforts of the Committee to expand the use of the collaborative process for managing conflict and resolving disputes. Committee members are kept informed of upcoming collaborative law events sponsored by the ABA and other organizations, including trainings, continuing education and writing opportunities.

THANK YOU, LINDA WRAY

The Committee sincerely thanks Linda Wray for her outstanding service as Co-chair for the past several years. Later this year Linda will be installed as President of the International Academy of Collaborative Professionals at the IACP's 15th Annual Networking and Educational Forum. Linda intends to stay involved with the ABA Collaborative Law Committee. We wish her the very best as she assumes the leadership position of the premier collaborative practice organization, with over 5000 members in twenty-nine countries.

WELCOME, MELANIE ATHA

The Committee welcomes Melanie Merkle Atha as our new Co-chair. Melanie is a partner in the Birmingham law firm of Cabaniss, Johnston, Gardner, Dumas and O'Neal LLP. For several years, Melanie has had a diverse litigation practice. In 2010, she discovered Collaborative Practice while reading an ABA Journal describing David Hoffman's family law practice. "Never underestimate the power of the morning mail to transform your life!" she likes to say.

In 2011, after receiving collaborative training from IACP she began recruiting lawyers and other professionals in Alabama. She was a co-founder of the Birmingham Collaborative Alliance, and she
has been actively involved in the successful efforts to enact the Uniform Collaborative Law Act in the State of Alabama. We congratulate Melanie and her colleagues on their accomplishments in a state that has only had collaborative practitioners for three years.

Next Committee Meeting:

The Collaborative Law Committee will meet in person in Miami during the Section’s Annual Spring Conference, and via telephone conference: April 4, 2014 at 7:30 am USA Eastern Daylight Time.

Members of the Council are welcome to attend:

Toll free dial-in information: Dial in number: 866.646.6488  
Conference Code: 2360398078

Law School Sub-committee Presentation:

TEACHING COLLABORATIVE LAW IN LAW SCHOOLS

The mission of this Committee's Law School Sub-committee is to encourage and assist in developing courses on Collaborative Law in law schools, the addition of Collaborative Law competence in bar examinations, and the addition of Collaborative Law in continuing legal education programs.

The members of the Law School Sub-committee: Cynthia DeBose (Stetson University College of Law), Forrest "Woody" Mosten (UCLA School of Law), Kristen Blankley (University of Nebraska College of Law), Yishai Boyarin (Hofstra University School of Law), and ex officio Larry Maxwell, Co-chair of the Collaborative Law Committee.

In 2012 the Law School Sub-committee conducted a survey of law professors teaching ADR related courses. A Summary of the Survey prepared by Professor Cynthia DeBose is attached. The survey was sent to over 500 members of the American Association of Law Schools ADR Section. The survey did not include the law school's adjunct faculties.

Plans are underway to re-activate the Law School Sub-committee this year. Committee member Sherrie Abney has been teaching a 3 hour collaborative law course at SMU School of Law for four years. Committee Co-chair David Hoffman will be teaching a 3 hour collaborative law course at Harvard School of Law this Fall.

David and Sherrie will describe their courses, and will lead a discussion regarding how to best encourage law schools to establish collaborative law courses. Professor John Lande, University of Missouri School of Law has shared his comments and suggestions (see attached).
**Just Resolutions E-News:**

For the past three years, the Committee has been providing content for the Section’s June newsletter. The Committee will again provide content for the Section’s newsletter in June, 2014. Committee members are encouraged to submit articles for consideration. Council members are welcome to contribute comments and/or articles.

**Upcoming Events:**

During the Section’s Annual Spring Conference Committee members Sherrie Abney (TX), Brad Hunter (Canada) and Larry Maxwell (TX) will be making a presentation: *What Ethical Considerations Face Collaborative Lawyers?* (April 3, 9:45 to 11:00 a.m.).

The Committee will be sponsoring a dine around during the Conference, on Thursday evening following the Welcome Reception.

April 18-19, 2014 - Interdisciplinary Collaborative Law Training, Atlanta, Georgia  
For details contact Nora Bushfield - nora@atlantalaw.net

Sept. 30-Oct. 2, 2014 - Civil Collaborative Law Training, Fao Paul, Brazil  
For details contact Sherrie Abney - sherrie.abney@att.net

October 8-10, 2014 - Global Collaborative Law Council and SMU Dedman School of Law  
10th Annual Civil Collaborative Law Training and Symposium on Limited Scope Representation and Unbundled Legal Services, Dallas, Texas  
For details contact Larry Maxwell - lmaxwell@adr-attorney.com

October 23-26, 2014 - IACP 15th Annual Networking and Educational Forum, Vancouver, British Columbia  
For details contact Linda Wray - lwray@tclegalservice.com

Members are encouraged to inform the Committee of upcoming events and publication opportunities relating to the collaborative process, and Committee members are informed via the listserv.

The **Legislative Sub-committee** chaired by Harry Tindall (TX), regularly reports on enactments and introductions of the Uniform Collaborative Law Act, and coordinates with the activities of the Uniform Law Commission in seeking enactment of the UCLA. The UCLA has increased awareness and interest in collaborative practice in jurisdictions where it has been enacted.

As of this date, a version of the UCLA has been enacted in eight jurisdictions: Utah, Washington and Hawaii (applicable to all civil matters); in Texas, Ohio, Nevada and the District of Columbia (applicable to family law matters); and in Alabama (applicable to family and probate matters).
A version of the UCLA has been introduced in Florida, Illinois, Massachusetts, Michigan, New Jersey, Oklahoma and South Carolina, and more introductions are anticipated in 2014.

Discussions are underway in Alaska. Court rules are being proposed in New Mexico.

For additional information on the status of the UCLA, go to the website of the Uniform Law Commission, or contact Harry Tindall, chair of the Legislative sub-committee or Larry Maxwell, Committee co-chair.

Other sub-committees are actively involved in advancing the Mission of the Collaborative Law Committee, which is to expand the understanding and use of the collaborative law process, nationally and internationally.

Respectfully submitted,

Lawrence R. Maxwell, Jr., Dallas, TX lmaxwell@adr-attorney.com
David S. Hoffman, Boston, MA dhoffman@BostonLawCollaborative.com
Melanie Atha, Birmingham, AL mma@cabaniss.com

Co-chairs, Collaborative Law Committee
Mission Statement

The mission of the Collaborative Law Committee of the ABA Section of Dispute Resolution is to expand the understanding and use of the Collaborative Law process nationally and internationally.

THE COLLABORATIVE LAW COMMITTEE:

A. Educates the ABA, other members of the legal profession, law students and legal educators, other professionals, the judiciary, legislators, and the public about the practice and benefits of Collaborative Law;

B. Expands the use of Collaborative Law in all areas of legal practice in the United States and internationally;

C. Encourages ongoing education of collaborative practitioners to assure the highest level of competency;

D. Explores the use of Collaborative Law with other dispute resolution processes;

E. Encourages the enactment of Collaborative Law legislation in the United States and internationally, and monitors and advises the Section Council about developments in Collaborative Law, including legislation and ethical opinions;

F. Encourages the diversity of practitioners in Collaborative Law and the expanded use of Collaborative Law in low and moderate-income and diverse communities;

G. Encourages and assists in developing courses on Collaborative Law in law schools, the addition of Collaborative Law competence in bar examinations, and the addition of Collaborative Law in continuing legal education programs; and

H. Helps the Section build bridges to such organizations as the International Academy of Collaborative Professionals, the Global Collaborative Law Council, the Association of Family and Conciliation Courts, and other entities within the ABA, including the various Sections and the Standing Committee of the Delivery of Legal Services.

EXHIBIT “A”
ABA Collaborative Law Committee

Sub-committees 2013

Education Sub-committee:

   A. Educates the ABA, other members of the legal profession, law students and legal educators, other professionals, the judiciary, legislators, and the public about the practice and benefits of Collaborative Law;

   C. Encourages ongoing education of collaborative practitioners to assure the highest level of competency;

   G. Encourages and assists in developing courses on Collaborative Law in law schools, the addition of Collaborative Law competence in bar examinations, and the addition of Collaborative Law in continuing legal education programs;

Expanding Collaborative Practice Sub-committee: Co-Chair: Chris Floyd (VA), Sherrie Abney (TX)

   B. Expands the use of Collaborative Law in all areas of legal practice in the United States and internationally;

   D. Explores the use of Collaborative Law with other dispute resolution processes;

   F. Encourages the diversity of practitioners in Collaborative Law and the expanded use of Collaborative Law in low and moderate-income and diverse communities;

Legislative Sub-committee: Chair: Harry Tindall (TX)

   E. Encourages the enactment of Collaborative Law legislation in the United States and internationally, and monitors and advises the Section Council about developments in Collaborative Law, including legislation and ethical opinions;

Ethics Sub-committee: (Chair to be selected)

   C. Encourages ongoing education of collaborative practitioners to assure the highest level of competency;

Liaisons: (to be selected)

   H. Help the Section build bridges to such organizations as the International Academy of Collaborative Professionals, the Global Collaborative Law Council, and other entities within the ABA, including the various Sections and the Standing Committee of the Delivery of Legal Services.

EXHIBIT “B”
The survey was sent to 580 members of the American Association of Law Schools ADR Section. The purpose of the survey was to identify current CL courses and to gauge interest in establishing CL courses. The number of responses was not as anticipated; however, the data obtained is helpful.

Most of the professors responding were tenured with over 20 years of full time law school teaching, and 1-5 years teaching ADR-related courses. The majority of responders were female. More Midwest law schools responded to the survey than other areas of the country.

Most law schools do not offer CL as a stand-alone course. The responders were not the professor that "regularly" taught a CL course.

All responding would be willing to share their CL-related teaching materials and most would support the materials being published on a public, professional website. Half of those responding dedicated 1 to 2 hours to CL as part of another course. A majority of those who taught CL as a part of another course would be willing to share CL-related teaching materials and support the materials being published on a public, professional website.

More than half of the responding do not teach a CL course. Most of those responding who teach CL would be willing to share their students' role plays, drafting exercises or other forms of experiential learning activities and would support them being published on a public, professional website.

Most of those responding did not utilize/show any videos in their CL course and used their own CL materials.

Local CL practitioners provided most of the support for a CL course. Most institutions not currently offering a CL course do not have any on-going plans to create a CL course. However, there has been no resistance to creating a CL course. Most of those responding would prefer stand-alone teaching materials for smaller scale exposure to CL.

Comments and Suggestions:

Teach CL once as a summer course.

After CL is established in law schools, state bar examiners should be encouraged to include CL on bar exams.

Several ADR and mediation courses integrate CL as part of the curriculum.

Unsure if there would be sufficient enrollment to justify a stand-alone course; or include a CL course with other ADR offerings.

CL courses are offered in Spring and/or Fall semesters as 2 hour credit or 1 hour credit short courses.

ABA Section of Dispute Resolution  
Collaborative Law Committee  
Law School Sub-committee  

Survey conducted by:  
Professor Cynthia H. DeBose  
Stetson University College of Law
March 19, 2014 e-mail

Thanks very much for your invitation, Larry. I have other plans for that time so I won’t be able to participate.

I can give you my views here for what they are worth.

While I think it is fine to offer stand-alone CL courses, I think that’s generally an uphill effort and you are likely to have more success by at least combining it with efforts to incorporate CL units in other courses.

As you may know, law schools in the US have been undergoing a major retrenchment with enrollments dropping by something like 25-35% in the past few years. Even before this dramatic shrinking, it could be hard to add a new CL course and I assume that it will generally be much harder in the current environment. This coincides with an effort to focus the curriculum more on “bread and butter” legal skills to help students get jobs. CL courses teach skills, which is positive, but I suspect that many academics would consider the application to be too narrow to merit the investment in a stand-alone CL course. It also requires faculty who have a commitment to promoting CL and I suspect that there aren’t a lot of faculty who have that interest who don’t now teach CL. Some schools would use adjuncts to teach CL courses and, although they are paid much less than regular faculty, budgets for adjuncts are things that law schools can readily cut, unlike the budgets for tenured and tenure-track faculty.

I think that there are also challenges in getting faculty to incorporate CL into existing courses (such as ADR survey courses, Negotiation, and Family Law) but you are more likely to be successful. One of the challenges is that most faculty feel that they don’t have enough time to cover everything that they would like and so suggestions that they add material to their courses implies that they would need to eliminate material that they believe is important. So your effort would need to convince faculty of the value of including CL in their courses, recognizing that most probably don’t have the same level of interest in CL that you do. Obviously, you can point to the fact that lawyers are providing CL services around the country – though you may have to address a perception that it reflects a narrow segment of practice, largely being a subset of family cases. I think that you could bolster your “case” by arguing about generic values of CL. Indeed, that’s the focus on my work in planned early negotiation.

You might be more successful if you can provide teaching resources for faculty, who often feel overwhelmed with everything they need to do. You might provide syllabi for people to use as models and adapt if they want to teach stand-alone courses. You could also develop and share generic outlines for faculty who want to add 1-3 hours of class time into an existing course so that they don’t have to start from scratch. You might develop a list of law school texts that contain good discussions of CL, so that faculty can use the texts instead of finding material of their own. It would also help if you have simulations to share, again so that faculty don’t have to write them themselves. You might post such materials on one of your websites. I maintain a website of dispute resolution resources in legal education -- http://law.missouri.edu/drle/index.html -- and I would be happy to post relevant materials on that website.
I hope that this is helpful.

Although I won’t be at your program, I will be in Miami and I look forward to seeing you there.

Best,

John

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