The growth of Collaborative Law in the U.S. achieved a major milestone on August 9, 2007, with the issuance of an ethics opinion (#04-447) by the ABA Standing Committee on Ethics and Professional Responsibility approving the use of collaborative law agreements by lawyers.

Prior to this year, ethics committees in five states (Kentucky, Minnesota, North Carolina, New Jersey, and Pennsylvania) had approved the use of collaborative law agreements. However, in February 2007, the Colorado Bar Association issued a maverick advisory opinion declaring such agreements to be unethical, on the theory that collaborative law agreements put lawyers in the position of having the duty not only to represent the client but also to honor the contractual commitment to the other party to withdraw if litigation ensues. Notwithstanding the Colorado opinion, collaborative lawyers in Colorado continued to practice, using two-way agreements signed only by the clients, which the Colorado opinion explicitly permitted.

The opinion from the ABA Ethics Committee puts these questions to rest and squarely supports the use of collaborative law participation agreements so long as clients are well informed about the process. According to the ABA opinion, if a client chooses to hire a lawyer for a limited purpose (i.e., just negotiation), there are no conflicting duties - the lawyer is totally committed to serving the client in the negotiation, but not beyond.

The Collaborative Law Committee of the DR Section, which was created in February 2007, is continuing its work on a document that will review the ethical rules governing the practice of collaborative law, so that practitioners will have guidance on such issues as confidentiality, privilege, and information-sharing in the context of collaborative law cases. A copy of the ABA opinion is available at http://www.abanet.org/cpr (under "What's New").