

# Collaborative Law Practice

*By John Sarratt*

**The idea of** collaborative practice is not new. Its origins date to a letter written in 1990 from a family lawyer in Minneapolis, Minn., Stuart G. Webb, to the Honorable A. M. Keith, Justice of the Minnesota Supreme Court. From that single initiative, collaborative practice has spread to as many as 30,000 practitioners in 20 countries, though until now it has been confined almost entirely to domestic cases.

The hallmarks of the collaborative process are:

1. Open and transparent disclosure of all relevant information.
2. Honest negotiation based on real needs and interests and without the threat of litigation.
3. The parties sitting down face to face - with the support of their collaborative counsel - to talk through their dispute.
4. Privacy and confidentiality.
5. Shared use of truly neutral experts to provide information.
6. Mandatory attorney withdrawal in case of impasse.

Stu Webb was motivated to introduce the concept of a collaborative law practice because he felt his clients, who were couples going through a wrenching personal experience, were not being well served by the litigation model of resolving disputes. Coincidentally, others had reached the same conclusion about civil litigation in general. In 1983 the Task Force on Dispute Resolution was created by the North Carolina Bar Association to look at possible alternatives to trial as a way of resolving disputes. That task force became the NCBA's Committee on Dispute Resolution and then the Dispute Resolution Section, and the development of mediation in North Carolina had begun. In the meantime, the use of arbitration as an alternative to trial has also grown.

Over time, however, many business clients, along with their lawyers - both in-house and outside counsel - have begun to feel that the entire system of litigation, including alternatives such as mediation and arbitration, is becoming bogged down in expensive and time-consuming discovery, motion practice and the gamesmanship that is part of any winner-take-all system. For those clients, collaborative practice offers an alternative to any form of dispute resolution that leaves the relationship between the parties broken, and the parties themselves frustrated that they have lost control of how their personal and business problems are being handled. In collaborative practice, the parties - each represented by counsel - are in control, and are working in a cost and time effective manner to achieve a resolution of their common problem that reflects the needs and interests of each party. The collaborative lawyers back up this exclusive commitment to out-of-court resolution with an agreement that they will not themselves take the matter to court if the collaborative effort fails.

In the family law context, collaborative practice has worked in North Carolina as elsewhere around the country where com-

mon interests exist, such as doing what is best for the children of a marriage, limited resources, a need for ongoing communications, and a desire for privacy and confidentiality. In 2014 the Dispute Resolution Section formed the Collaborative Law Committee to expand collaborative practice outside the family law context based on the premise that these same factors are present in many business and other civil disputes. Often the parties to a dispute have an ongoing relationship and a common interest in the dispute not contaminating that relationship with each other or with common vendors and customers. For many, the cost of litigation is also a factor; and frequently time is of the essence, creating a need for prompt resolution. Other benefits include the complete privacy of the proceeding - with no public record created - and that the parties themselves are in control of the outcome, with no judge, jury or arbitrator dictating the result. Collaborative practice addresses all of these concerns. It is not a panacea. It will not suit every lawyer, every client, every case, or every situation. It is simply another tool in the toolbox. It does, however, offer a highly efficient, expedient, and less costly solution to business disputes, and puts the client in charge, working to improve rather than harm existing business relationships. Every negotiating session in the collaborative process includes all of the parties sitting down face-to-face accompanied by, but not shielded by, their counsel.

Since its formation two years ago, the Collaborative Law Committee has attracted members from all seven law schools located in North Carolina, as well as representatives from NCBA Sections including the Business Law Section (Jeff Batts is your Committee liaison) as well as the Sections on Administrative Law, Construction Law, Dispute Resolution, Estate Planning and Fiduciary Law, Family Law, Labor and Employment, and Litigation. The Committee membership also includes experienced family law collaborative lawyers.

In April, the first two-day training session was offered, focused on collaborative practice in a construction law context. Following the training session, a group of construction lawyers was formed to begin educating the construction industry about the collaborative alternative. Training sessions are in the planning stages aimed at Labor and Employment lawyers, and at Estate Planning lawyers. Other training sessions will follow. Any of these sessions provides basic training in Collaborative Law to any lawyer in any field of practice. Recently a Collaborative Law Listserv has been created by the NCBA.

Collaborative practice has also been presented to students at Elon, Charlotte and Wake Forest law schools, and it is anticipated that a presentation will be made at Duke law school next semester.

In addition to the work being done here in North Carolina, there are international and national organizations devoted to further spreading and developing collaborative practice. The first and largest is the International Academy of Collaborative Professionals (IACP), [www.collaborativepractice.com](http://www.collaborativepractice.com), an international, interdisciplinary organization that has promulgated a uniform definition of collaborative practice, standards for collaborative practice

tioners and trainers, a model interdisciplinary code of ethics, and public and professional education programs. Another international organization is the Global Collaborative Law Council (GCLC), [www.collaborativelaw.us](http://www.collaborativelaw.us). It was established in 2004 by a group of Texas collaborative lawyers and now has members throughout the United States and abroad with a mission to advance the use of the collaborative process in resolving civil disputes.

If you are interested in the collaborative approach to addressing any of your client's disputes, there are several options you might pursue:

1. There will be future training sessions if you wish to become a collaborative lawyer yourself.
2. Members of the Dispute Resolution Section's Collaborative Law Committee would be happy to address your law firm, local bar, practice group, or client/industry group to provide more detailed information about collaborative practice.

3. There is a Collaborative Law ListManager at the North Carolina Bar Association. Sign on and participate in the conversation about collaborative practice. Contact Julie Dambro at [jdambro@ncbar.org](mailto:jdambro@ncbar.org) for details.
4. Contact me directly at [jsarratt@hshllp.com](mailto:jsarratt@hshllp.com), and I'll be happy to try to answer your questions.

*For 35 years **John Sarratt** was a partner in several major North Carolina firms - Brooks Pierce, Petree Stockton, and Kennedy Covington - and was recognized in the area of business litigation by Business North Carolina Magazine's Legal Elite, Best Lawyers in America, and North Carolina Super Lawyers. He is also a certified mediator and has served as an American Arbitration Association panel arbitrator. He is now a partner in Harris Sarratt & Hodges, LLP in Raleigh, where he is building a collaborative practice for business disputes. John has served the NCBA in numerous capacities, and is now chair of the Collaborative Law Committee of the Dispute Resolution Section. He may be contacted at [jsarratt@hshllp.com](mailto:jsarratt@hshllp.com).*

## Strategies for Litigation Management and Prevention Corporate Counsel Lunch and Learn

Friday, Nov. 4 | Robinson Bradshaw & Hinson PA, Charlotte

In a world of continually escalating legal costs and numerous litigation risks, corporate attorneys are faced with the challenge of generating successful litigation outcomes at low costs to their companies. This two part CLE will address litigation management from the perspectives of inside and outside counsel. Internal and external counsel must work together to map out and execute a plan of action for litigation matters. The first part of the presentation will explore strategies for effectively, and economically, handling litigation matters, including how internal counsel and the lawyers they hire can work together to best manage cases that are unpredictable, and often unwanted. The second part of the presentation will be an interactive session addressing developing internal controls for detecting, addressing and preventing litigation risks and selecting outside counsel and ensuring predictability in billing, excellent service and value, no matter the size of your legal budget.

## SAVE THE DATE | Mastering a Broad Practice 2017 Corporate Counsel Section Annual Meeting

January 27, 2017 | N.C. Bar Center, Cary

This year's annual meeting addresses the breadth of expertise, skills and challenges faced by in-house counsel. "Mastering a Broad Practice" includes practical, informative and interactive sessions aimed to equip corporate counsel with the tools necessary to tackle a range of issues including best practices in corporate governance, compliance and financial disclosures, cybersecurity and data breaches, managing contract portfolios, corporate governance crises, and ethical issues and intricacies of an in-house practice. Learn from experts in these areas, collaborate with peers and take your in-house practice to the next level.

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## The Uniform Law Commission

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The Uniform Law Commission (formerly the National Conference of Commissioners on Uniform State Laws) has drafted more than 250 uniform laws on numerous subjects and in various fields of law where uniformity is desirable and practicable. The signature product of the Commission, the Uniform Commercial Code, is a prime example of how the work of the Commission has simplified the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state.

In 2007, the Commission determined that uniformity would bring "clarity and stability" to the collaborative process, and set about the task of codifying the process. The purpose of the Uniform Collaborative Law Act is "to support the continued development and growth of collaborative law by making it a more uniform, accessible dispute resolution option for parties."

In July 2009, the Commission unanimously approved a Uniform Collaborative Law Act. In March 2010, the UCLA Drafting Committee reconvened and made several additions to the original Act, including the addition of court rules that mirror the Act. The drafting committee also added a provision giving states alternatives as to the scope of the Act:

(1) they could limit its application to matters arising under the family laws of a state; or (2) they could impose no limitation on matters that can be submitted to the collaborative process.

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| • Provide consistency from state to state regarding enforceability of collaborative law agreements; | • Provide a stay of court and other adversarial proceedings while parties are in the process;        |
| • Provide automatic tolling and recommence running of applicable statutes of limitations;           | • Make provision for obtaining emergency orders;   |
| • Establish when the collaborative process begins and concludes;                                    | • Provide a privilege with appropriate limitations, should the process not result in settlement; and |
| • Assure confidentiality of communications during the process;                                      | • Eliminate choice of law determinations.  |

## Update on UCLA Efforts and Enactments

Uniform Collaborative Law Act (UCLA) efforts continue to move forward in the United States. At this time three states have limited pre-UCLA laws/rules in place:

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| California     | 2007 – Collaborative Family Law Act |
| North Carolina | 2003                                |
| Minnesota      | limited court rules                 |

Fourteen jurisdictions have passed the UCLA:

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| Alabama              | 2013 – Family and family related, statute<br>2015 – Rules added |
| Arizona              | 2015 – Family by court rules                                    |
| District of Columbia | 2011 – Family by statute  |
| Hawaii               | 2012 – All areas of law   |
| Maryland             | 2014 – All areas of law, by statute<br>2015 – Rules added       |
| Michigan             | 2014 – Family, statute only, working on rules                   |
| Montana              | 2015 – All areas of law   |
| Nevada               | 2013 – All areas of law   |
| New Jersey           | 2014 – Family   |
| North Dakota         | 2016 – Rules passed – all areas of law                          |
| Ohio                 | 2013 – Family   |
| Texas                | 2001 – Pre-UCLA<br>2011 – Family<br>2017 – Expanding to all     |
| Utah                 | 2010 – All areas of law   |
| Washington           | 2013 – All areas of law, by statute                             |

Finally, fourteen states have UCLA efforts underway:

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| California* | Beginning efforts to expand to civil practice        |
| Florida     | Statute passed, waiting on rules<br>2016 HB967/SB972 |
| Illinois    | Beginning efforts – Family<br>2016 SB 2735           |

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| Massachusetts  | Beginning efforts – All areas of law<br>2016 HB 30 (H.39)                         |
| Michigan**     | 2014 – Family by statute<br>2016 working on rules, considering expanding to civil |
| New Hampshire  | Beginning efforts   |
| New Mexico     | Court rules   |
| Oklahoma       | Maybe 2017 – Family   |
| Oregon         | Beginning efforts   |
| Pennsylvania   | 2015 Bar endorsed – disputes between family members (not limited to family law)   |
| South Carolina | Beginning efforts – All areas of law  |
| Texas***       | Expanding scope to all  |
| Virginia       | Beginning efforts   |
| Wisconsin      | Beginning efforts   |

\*California has a pre-UCLA statute in effect but is working to expand on that.

\*\*Michigan has a statute in place but is working on rules.

\*\*\*Texas has a UCLA in place but is currently working to expand it beyond Family Law.

IACP's UCLA Advisory Panel does its best to stay up on what is happening around the country, but it can be difficult. There may be efforts, or progress on efforts, that we have not heard about. If you have information about work being done that is not included above, or have an update for us, we would LOVE to hear from you. You can contact the Chair of our committee, Mike Fancher, at [mike@seattledivorceservices.com](mailto:mike@seattledivorceservices.com).

Also, if there is anything our committee can do to assist with ongoing UCLA efforts in your area, please let us know that as well. Each committee member has been involved with UCLA efforts in their own states, so we can offer ideas, advice or additional contacts.