The Current and Prospective Use of Collaborative Law in Maryland

Administrative Office of the Courts

September 2013

The Current and Prospective Use of Collaborative Law in Maryland

A Collaboration Between:

Maryland Administrative Office of the Courts

and

Institute for Governmental Service and Research,

University of Maryland, College Park

September 2013

Acknowledgements

This report was prepared by the Institute for Governmental Service and Research (IGSR), University of Maryland, College Park, in collaboration with the Maryland Administrative Office of the Courts (AOC). The study presented in this report, which was funded by the AOC, is connected to a broader study of alternative dispute resolution in Maryland courts currently being conducted by the AOC in collaboration with the Center for Dispute Resolution at the University of Maryland Francis King Carey School of Law and the Center for Conflict Resolution at Salisbury University with funding support from the State Justice Institute (SJI) under grant number SJI-10-N-146.

The report was authored by Jeanne Bilanin and Travis Johnson of IGSR. In addition to material developed by researchers at IGSR, the report contains material developed by Toby Treem Guerin and Roger Wolf at the University of Maryland Carey School of Law and Llewellyn Cornelius at the University of Maryland School of Social Work through research they conducted for AOC's Department of Family Administration. Others making valuable contributions to the project include three former IGSR researchers: Heather Fogg, now at the Maryland Judiciary, Mediation and Conflict Resolution Office, Jonathan O'Reilly, and Dana Carmichael.

The study could not have been completed without the thoughtful input and cooperation of six Maryland collaborative law attorneys who participated in interviews during 2010, and 25 anonymous Maryland attorneys who responded to a 2012 online survey with their perspectives on collaborative law. The researchers would also like to thank the circuit court's Family Support Services Coordinators, who took time out of their busy schedules to provide valuable information on their programs. Finally, the researchers would like to thank Madeleine Jones, Family Support Services Coordinator of the Montgomery County Circuit Court, Lou Gieszl and Nick White of the Maryland Mediation and Conflict Resolution Office, and Connie Kratovil-Lavelle and Michael Dunston of the Department of Family Administration, all of whom served as advisors to the researchers, meeting with them during the study and providing beneficial guidance and input.

Questions concerning this report should be directed to Diane S. Pawlowicz, Executive Director of Court Operations, Administrative Office of the Courts. She can be reached at 410-260-1725 or via email at diane.pawlowicz@mdcourts.gov.

Table of Contents

Acknowledgements ..... **iii**

Table of Contents ..... **iv**

Executive Summary ..... **vi**

Introduction **1**

Overview of Collaborative Law 1

Key Components of Collaborative Law 3

Perceived Advantages and Drawbacks of Collaborative Law 4

Advantages and Drawbacks to the Parties 4

Advantages and Drawbacks to the Courts 5

Advantages and Drawbacks to the Bar 6

Standards for the Practice of Collaborative Law 7

Uniform Collaborative Law Act (UCLA) 9

Ethical Concerns Regarding Collaborative Law 11

Neutral Experts in Collaborative Law 12

Collaborative Law in Practice 12

Collaborative Practice in Maryland **24**

Collaborative Practice and the Maryland Courts 26

2012 Collaborative Law Survey 28

Respondent Practices 28

Legal Costs of Collaborative Law 33

Client Characteristics 34

Benefits of Collaborative Law 36

Limitations of the Practice of Collaborative Law 36

Expanding Collaborative Law in Maryland 37

Familiarity with the Uniform Collaborative Law Act 38

Summary and Conclusions 39

The Collaborative Law Movement 39

Past Research on Collaborative Law 40

Collaborative Law in Maryland 40

Recommendations 43

References 46

Appendix: Survey of Collaborative Law Practitioners 51

Executive Summary

The Administrative Office of the Courts (AOC) asked researchers at the Center for Dispute Resolution at the University of Maryland Carey School of Law and the Ruth C. Young Center for Families and Children at the University of Maryland School of Social Work to determine the utilization of alternative dispute resolution practices, including collaborative law (CL), in the Maryland courts. Researchers at the Institute for Governmental Service and Research (IGSR) at the University of Maryland, College Park were asked to examine the prospective use of CL in Maryland. This report contains the researchers' findings from reviews of existing studies and interviews and surveys of court personnel and CL attorneys in Maryland. Because the report reflects the experiences of only a small number of individuals involved with CL in Maryland, caution must be exercised in extrapolating the findings.

CL is an alternative dispute resolution process in which the parties and their respective attorneys establish formal agreements to resolve the dispute through cooperative negotiations and information sharing, as opposed to traditional litigation. CL can be used to resolve commercial disputes, but is used most commonly in divorce cases. Unlike mediation, CL does not typically incorporate a third party mediator; rather, the clients' respective attorneys collaborate on a resolution that is acceptable to both parties. In the event a resolution cannot be reached and either client opts to go to court, the attorneys for both clients must withdraw from the case and the clients must hire new counsel.

The model CL process is handled by a collaborative team comprising clients' attorneys and other professionals such as financial, mental health, and child development specialists engaged by the clients. In practice, based on past studies and the survey conducted for this report, it appears that about half of CL cases proceed with only the clients and their attorneys as participants.

The practice of CL began in the early 1990s and has been advanced through a number of national and state level organizations, which have developed practice standards. The Uniform Law Commission has developed the Uniform Collaborative Law Act (UCLA), which has been adopted by legislatures in six states and the District of Columbia.

The American Bar Association (ABA) has taken the position that collaborative practice is consistent with the rules of ethics for lawyers. Several sections within ABA, as well as a number of state and local Bar associations, support adoption of UCLA. The ABA House of Delegates, however, voted against approval of UCLA by a wide margin. Some attorneys are concerned that adopting UCLA would set a precedent for regulation of attorneys by state legislatures. Other attorneys oppose the practice of CL itself.

Maryland is one of thirteen states in which an ethics body has indicated that CL is within accepted standards for legal practice. Currently, however, CL is not formally recognized in Maryland statute or judicial rules. UCLA was introduced in the Maryland General Assembly

during the 2012 legislative session. Following review of the bill, the Family Law, Alternative Dispute Resolution, and Legislative committees of the Maryland Judicial Conference all concluded that the provisions embodied in UCLA are more appropriately adopted as court rules. The bill received an unfavorable report from the House Judiciary Committee, was withdrawn, and was not reintroduced in the Maryland General Assembly in 2013.

Advocates credit CL with providing a more positive legal experience for clients by creating a foundation for productive ongoing interactions. The benefits to the courts of CL, according to proponents are a reduced workload because the court is not involved in processing motions and scheduling proceedings. The need for attorneys to acquire different skills to practice CL than are needed for a traditional litigation practice is viewed as an advantage of the CL process by some in the legal community and a drawback by others. Benefits identified by CL attorneys include increased satisfaction in their practice, increased civility among attorneys, and a more positive image of attorneys on the part of the public. Among members of the Bar, opponents of CL often raise concern over potential conflicts of interest, limited representation, and confidentiality. When state ethics bodies have addressed these topics, however, they have almost always concluded that the practice of CL conforms to attorneys' ethical standards.

There is a limited number of previous studies of the practice of CL. Past studies describe the typical CL practitioner as a female family law attorney for whom CL represents only a portion of the caseload—often only one to two cases per year. CL attorneys spend roughly 30 hours on a typical CL case over a period of 6 to 12 months. Average legal charges are somewhere between $8,000 and $20,000 per client. The only study that examined charges by other collaborative professionals, such as financial and mental health specialists, in addition to attorney fees found that they added an average of about $3,300 in costs per case.

Based on estimates provided by CL attorneys, the CL process is successful in attaining an agreement in roughly 90 percent of cases. CL attorneys report that the outcomes of CL cases are similar to the outcomes of traditional cases, although additional components, such as creative plans for co-parenting, may be included in agreements coming out of CL.

According to past studies, typical CL clients are middle-aged and have household incomes that are above average and higher than the average income of traditional litigants. CL clients report that they are motivated to use CL by a desire to reduce costs, obtain speedier and better results, participate in a less adversarial process, and minimize the impact on their children. Participants are generally satisfied with the CL process. Some CL clients, however, complain that CL attorneys are more committed to the CL process than to their clients' interests.

Although CL is not currently a part of Maryland court rules, a CL suspension of case time is available for domestic relations cases in the circuit courts. CL suspensions are used when CL proceedings are pursued after a case has been filed. The suspension frees the case from applicable time standards. A stay in the proceedings to pursue CL also preserves the parties' rights to certain relief such as alimony and child support.

During 2012, there were 118 attorneys and 68 other professionals associated with CL practice groups in Maryland. CL practitioners estimate that several hundred additional Maryland attorneys have been trained in CL.

Since 2011, the Maryland Judiciary's Department of Family Administration has offered training of collaborative professionals. In exchange for receiving the free training, the attorneys and other collaborative professionals that attend must agree to handle a minimum of two CL cases on a pro bono basis. To date, more than 300 professionals have attended the training. As part of the present study, six Maryland attorneys with experience in CL were interviewed and the Family Support Service Coordinators in all 24 circuit courts were surveyed. In addition, 146 individuals who had received CL training offered by the Department of Family Administration were invited to respond to an electronic survey. Twenty-five attorneys, of whom eight reported currently practicing CL, responded. The respondents resembled the profile of the typical CL practitioner established in previous studies. The Maryland CL attorneys were mostly female, averaged 45 years of age, were typically quite new to CL practice, and participated in about one CL case per year.

Also consistent with what has been reported elsewhere, CL attorneys surveyed in Maryland estimated that nearly all of their CL cases involve family law and 91 percent involve divorce, slightly lower than the 97 percent of CL cases involving divorce reported nationally. Only four CL attorneys responding to the Maryland survey answered a question about the use of non-lawyer professionals in CL cases. On average, they reported that 43 percent of their cases involve consultation with neutral experts. The two other studies that provided data on involvement of non-lawyer professionals in CL cases reported their use in 56 percent and 57 percent of the cases studied. The case settlement rate estimated by CL attorneys in Maryland (97%) is higher than the rates reported in other studies, which ranged from 86 percent to 92 percent.

The Maryland CL attorneys that were surveyed reported spending an average of 32 hours per CL case over a six-month period, which is similar to the findings of two past studies. The Maryland CL attorneys also reported average legal costs of $8,900 per client. This value is also similar to the findings of two past studies. The Maryland CL attorneys expressed strong willingness to provide low bono CL services and somewhat less willingness to provide completely pro bono CL services.

As reported by the CL attorneys responding to the present survey, CL clients were more likely to be White than were their traditional litigation clients and very unlikely to be Black. Similarly, all the CL clients in other studies in which client race was reported were White.

In contrast to the findings of other studies, the median values of the incomes reported by the Maryland CL attorneys for their traditional and CL clients were equal, although both these medians were higher than the median of client incomes reported by the Maryland attorneys that do not practice CL. Interestingly, CL attorneys reported a higher proportion of their clients at both the lower and higher ends of the income spectrum compared to the clients of non-CL

attorneys. It appears that the Maryland CL clients tend to have lower incomes than the clients for whom income has been reported in national surveys. It is possible, however, that this difference reflects an anomaly of the Maryland sample.

The primary barriers to expansion of CL identified by Maryland survey respondents are a lack of awareness and understanding of the CL process by the public and non-CL attorneys and the high cost of CL. A shortage of professionals to participate on collaborative teams was also mentioned. Training offered by AOC's Department of Family Administration addresses both the need to expand awareness and understanding among attorneys and the need to develop a larger pool of other collaborative professionals. If wider acceptance of CL among attorneys is achieved, awareness and understanding of the process by the public and expansion of the pool of collaborating professionals available to serve on CL teams are likely to follow. Considering the evidence of strong opposition to CL among some members of the Bar, it is possible that a strategy for increasing opponents' awareness and understanding of CL is also needed.

Concerns about the legal cost of CL can be countered by the evidence in this and other studies that CL legal costs are, on average, less than the costs of litigation. Additional information about the costs of engaging other collaborative professionals is needed before conclusions can be drawn about the total cost of the CL process. While there is concern that many clients cannot afford CL, these clients may not be able to afford any legal services at regular rates. Rather than criticizing CL because it is not affordable for all, the challenge is to find ways to make CL available regardless of client income levels.

The following recommendations are designed to address barriers to the use of CL in Maryland:

- The AOC should work with the Maryland Bar Association and professional organizations for mental health and financial professionals to disseminate information about CL and expand CL training and networking opportunities among collaborative professionals.

- The Department of Family Administration should continue to require attendees at its free training to commit to providing pro bono collaborative services.

- The AOC should continue surveying Maryland CL practitioners, including attorneys and other professionals. This effort will provide additional information that can be used in educating the public, the Bar, and legislators about CL. The existing survey should be modified to obtain information, including the cost of their CL services, from mental health and financial professionals and attorneys. CL professionals should be surveyed following their attendance at CL training as well as after they have had a chance to establish CL practices.

Introduction

This report presents a synthesis of the information gathered through a collaboration between the Maryland Administrative Office of the Courts (AOC) and researchers at the University of Maryland. The Center for Dispute Resolution at the University of Maryland Francis King Carey School of Law; and the Ruth Young Center for Families and Children at the University of Maryland School of Social Work, worked with the AOC Departments of Court Operations and Family Administration to examine existing utilization of court-based alternative dispute resolution (ADR) practices, including collaborative law (CL). They focused on the use of ADR within the context of Family Administration (non-juvenile issues). As a non-court-affiliated process, CL is not monitored and tracked by the Family Support Services Coordinators (FSSC) in each county, nor is there consistent documentation of its use in court databases and court files. Consequently, the researchers reviewed the academic and professional literature and conducted interviews of Maryland practitioners and FSSCs to gain their perspectives on the existing use of CL in Family Administration issues. AOC engaged the Institute for Governmental Service and Research (IGSR) at the University of Maryland, College Park to examine the prospective use of CL in Maryland. The IGSR research team conducted additional reviews of the academic and professional literature on CL and developed an online survey to which CL practitioners in Maryland were invited to respond.

Overview of Collaborative Law

Collaborative law (CL) is an alternative dispute resolution process wherein the parties and lawyers establish formal agreements to resolve the dispute through cooperative negotiations, as opposed to traditional litigation. Initiated in 1990 by a family law attorney from Minnesota, Stuart Webb, CL grew out of an expanding frustration among family law practitioners with the bitter nature of traditional divorce proceedings. These practitioners sought a way to minimize the negative effects the proceedings had on families. They developed a process focused on better communication and greater client involvement (Webb & Ousky, 2006). In 2007, the Executive Director of the International Academy of Collaborative Professionals (IACP) estimated that 20,000 lawyers had been trained in CL (Crary, 2007). Lande (2011) reported that, as of 2010, "more than 30,000 professionals [had] received Collaborative training" (p. 277, f.n.5).

CL and mediation share proactive, problem-solving methods that seek to minimize conflict by focusing efforts on the "big picture" issues. Practitioners encourage cooperation, develop strategies for open communication, and seek to create an environment that empowers parties to make informed decisions. Through this process, parties learn problem-solving skills that can be applied to conflicts and disputes later in life (Tesler, 2008).

CL builds upon the theory and methods of mediation, but is distinct in several regards. For example, it is possible for the parties in a mediation to proceed *pro se*, but CL cannot be

undertaken *pro se*. Also, mediation involves an impartial third party facilitating negotiations, whereas in CL the attorneys serve as legal counsels to their respective parties while fostering a negotiation that seeks the best possible outcome for all parties. Another primary distinction is that the parties in CL are required to sign participation agreements - formal agreements that cover the terms of participation and procedural stipulations. Participation agreements typically specify that the lawyers' involvement will be limited to advice and negotiation. In the case of failed negotiations, if clients choose traditional litigation, attorneys will withdraw and the parties must hire new counsel.

CL can be used to resolve disputes in the areas of civil and commercial law (IACP, n.d.-a), but examples of CL use in these areas are rare. An analysis conducted by IACP of data collected on 933 CL cases between 2006 and 2010 revealed that 97 percent of the cases involved divorce (Wray, 2011a).

While CL practice is a recent development, the ideas behind it have been discussed for decades. The shift away from adversarial litigation, especially prominent in the area of family law, has occurred in response to social, economic, and legal developments that placed new demands on the courts. The push towards negotiation in cases of divorce was also influenced by consideration of long-term effects of divorce on children. The preeminent work by Mnookin and Kornhauser (1978) noted the "obvious and substantial savings when a couple can resolve distributional consequences of divorce without resort to courtroom adjudication." They added, "The financial cost of litigation, both private and public, is minimized. The pain of a formal adversary proceeding is avoided" (p. 956).

Custody determinations in divorce proceedings address parenting issues such as primary residence and decision-making responsibility. Historically, judges had a preference for awarding custody to mothers, in adherence to the tender year's doctrine (Roth, 1977). State legislatures began passing laws to end this practice in the 1970's, moving family courts toward current practices based on the *best interest of the child* standard (Elster, 1987). Case law trended in this direction as well.[1] Mnookin and Kornhauser (1978) further noted the growing number of "recent psychological studies [indicating] that children benefit when parents agree on custodial arrangements" (p. 956).

> "Moreover, a negotiated agreement allows the parties to avoid the risks and uncertainties of litigation, which may involve all-or-nothing consequences. Given the substantial delays that often characterize contested judicial proceedings, agreement can often save time and allow each spouse to proceed with his or her life. Finally, a consensual solution is by definition more likely to be consistent with the preferences of each spouse, and acceptable over time, than … a result imposed by a court" (Mnookin and Kornhauser, 1978, p. 956).

[1] While the *best interest of the child* standard is applied in Maryland, it is not found in Maryland statute.

Lande (2012) suggested the changes in child custody laws and the shift in social norms helped expand the use of mediation in divorce cases over time.[2]

In cases of divorce, a "typical" CL case may proceed as follows: Each party hires a collaboratively-trained lawyer. Both parties along with their lawyers sit down together for meetings, known as "four-way meetings," structured with the goals of fair and transparent negotiating. The parties and their lawyers establish the overarching goals and the interests of the divorcing parties and strive to reach those goals in order to create a fair and reasonable separation agreement.

At the very first four-way meeting involving each client and his/her respective CL attorney, the parties and their attorneys voluntarily review and sign a collaborative participation agreement, which states that, if either party decides to abandon the process, then both attorneys must withdraw representation. Thus, the parties would have to hire new attorneys in order to proceed with litigation. The parties can involve other professionals as needed throughout the process. The term "core professionals" refers to the lawyers, financial experts, mental health professionals, and mediators engaged to assist one or both clients, whether they are retained at the outset or during the process (Wray, 2011a, p. 10, f.n. vii). Core professionals are distinguished by the breadth of their roles in the process compared to other professionals that may be retained to provide expertise on specialized issues, such as valuing assets (Wray, 2011-a).

Key Components of Collaborative Law

The *IACP Principles of Collaborative Practice* (IACP, 2005) acknowledge that there are many models for CL, but "inviolable core elements" set out in a contractual commitment, the participation agreement, among the parties and their chosen professionals differentiate CL from traditional litigation. These core elements commit participants to the following:

- negotiating a mutually acceptable settlement without using court to decide any issues for the clients;
- withdrawal of the professionals if either client goes to court;
- engaging in open communication and information sharing; and
- creating shared solutions that take into account the highest priorities of both clients.

The participation agreement; communication through face-to-face four-way meetings; informal discovery and transparency; and emphasis on a holistic interdisciplinary approach are defining characteristics of CL. The participation agreement, signed by the two parties and their attorneys at the outset, specifies the following:

---

[2] Maryland Rule 9-205 requires the court to order the parties to mediate disputes involving child custody or visitation if the court concludes that mediation is appropriate and likely to be beneficial to the parties or the child and that a qualified mediator is available.

- goals of the negotiations;
- commitments to participate with integrity and respect, negotiate in good faith, and not pursue court proceedings;
- agreement to exchange information freely;
- arrangements for paying fees and costs associated with the process;
- how children's issues will be handled; and
- retention of non-legal experts.

The participation agreement also contains the disqualification agreement, which states that if the matter cannot be resolved through the CL process, the parties cannot be represented by the participating CL attorneys in a court proceeding.

Communication between the parties occurs at four-way meetings in which both attorneys and clients play active roles. In contrast to the formal discovery of traditional litigation, information, including financial data, is provided voluntarily in the CL process. The holistic interdisciplinary approach is exemplified by engaging financial analysts, mental health professionals, and child development specialists in the process.

Perceived Advantages and Drawbacks of Collaborative Law

Advantages and drawbacks of CL to the parties, to the court, and to the Bar were identified through interviews with six attorneys practicing CL in Maryland and a review of the literature. Because studies to date have been limited, the perceived advantages and drawbacks have not been conclusively substantiated or refuted.

Advantages and Drawbacks to the Parties

Among the advantages to the parties identified by interviewees was a more positive legal experience than traditional litigation that results from encouraging cooperation and reducing or eliminating the adversarial aspects of court. The parties' costs are also reduced since they agree to use the same experts instead of paying dueling experts. One CL practitioner that was interviewed estimated that a divorce using CL cost $20,000 to $30,000 per party, compared to $40,000 to $50,000 per party in a contested litigated divorce. CL affords the parties equal access to information because both parties agree to be open and honest and share information with each other and the ability for each party to express him or herself and be heard in a safe environment.

Interviewees also perceived that CL helps to improve communication skills among divorcing spouses and children, sometimes using coaches and other communications experts, which facilitates dealing with problems that may arise post-divorce. The use of experts and attorney-guided conversations is said to help parents make good decisions and develop a mutually acceptable and durable agreement for themselves and their children. Interviewees claim that by emphasizing joint problem solving, rather than being restricted by court remedies, CL leads to more creative solutions. They also argue that CL helps to reduce anxiety and uncertainty by allowing the parties, instead of a judge, to control the process.

Although the process is less expensive than litigation, interviewees noted that it still involves substantial costs for the services of lawyers, coaches, financial advisors, and mental health professionals. According to the interviewees, the major drawbacks of CL are associated with cases that fail to result in a full CL-based agreement. If CL is unsuccessful, the parties must find new attorneys to represent them in litigation, potentially doubling the overall cost of the divorce. Interviewees also noted that, when a CL process fails to achieve an agreement, the subsequent litigation may be even more contentious than it would have been if litigation had been pursued at the outset.

A criticism of CL commonly found in the literature is that it is not affordable for low and moderate income parties. Unlike mediation, the CL process cannot be undertaken *pro se*. Because of the disqualification agreement, it is also possible that unequal outcomes will accrue to a party with fewer financial resources, who must continue with CL due to inability to afford another attorney (Bryan, 1999). There is also the possibility that during the CL process a party may reveal something he or she would not have revealed in a traditional divorce that then becomes a disadvantage if the case goes to court.[3]

Some attorneys have raised the possibility that CL clients are harmed because CL attorneys seek the best outcomes for the family, rather than focusing on their individual client's interests. These attorneys contend that CL attorneys are violating their duty to act as zealous advocates for their individual client's interests, while other attorneys believe the CL role is compatible with their advocacy responsibilities.

Advantages and Drawbacks to the Courts

Advantages to the courts identified by the Maryland interviewees included savings in court time and personnel, more efficient docket control, and civility. The savings in court time and personnel occur because motions for production of information, motions for contempt, and requests for interrogatories and depositions are not needed due to voluntary sharing of information. Similarly, requests for psychological examination and drug testing are obviated by the involvement of experts who can address these issues. There is no need for court clerks to schedule settlement conference, mediation, and trial, and there is no cancellation of trial dates, leaving unfilled dockets when a settlement is reached at the last minute.

The only drawback to the courts identified by interviewees occurs when parties have stayed court proceedings in favor of CL but are unable to reach agreement. The subsequent litigation involves new attorneys, who must become familiar with the proceedings and parties.

---

[3] Non-disclosure agreements are designed to avoid this problem, however.

This may necessitate postponement of previously scheduled court dates. Interviewees also noted that the parties may have become more confrontational, leading to a more difficult court process.

Advantages and Drawbacks to the Bar

The Maryland interview results support assertions in the literature that CL attorneys may be more satisfied by their practice (Shields et al., 2003) and that they gain skills in changing oppositional thinking by clients and other lawyers (Tesler, 2008, p. 119). The Maryland CL attorneys that were interviewed identified increased civility among attorneys, more favorable views of attorneys by clients, use of attorneys as problem solvers, and fewer issues over fees and payments as benefits of CL.

Drawbacks of CL for the Bar are connected to the different roles played by attorneys in CL compared to traditional practice. CL attorneys must acquire skills in mediation and consensus building.[4] They must also recognize the ethical concerns regarding conflicts of interest, limited representation, confidentiality, and other issues that are specific to CL. Because the CL process differs from traditional litigation in key ways, CL attorneys must take special care to thoroughly explain the CL process and alternatives to prospective clients and obtain informed consent at the outset.

While there are many strong proponents of CL among Bar members, there are also opponents. As discussed later in this report, opposition among attorneys with litigation practices has been cited as a reason that CL has not become more widespread. Another objection was raised by a tax attorney from Texas who spoke with the researchers. He claimed that affluent individuals pursue divorces through CL to keep their financial information out of public view, avoid hiring a tax lawyer, and evade taxes.

[4] Note, however, that CL attorneys are not required to have the same level of mediation training as Maryland's court-designated mediators, who must have 40 hours of basic mediation training plus an additional 20 hours of training in mediation of economic issues to qualify as a mediator for divorce and annulment cases and another 20 hours of family mediation training with specified content to qualify as a mediator for child custody and visitation cases.

National Context for the Practice of Collaborative Law

As noted earlier, CL originated in the U.S. in the 1990s and is now practiced in countries throughout the world. In the U.S., numerous independent professional organizations, including IACP, the Global Collaborative Law Council (GCLC), and state-level organizations, have been created to advance the practice of CL. The National Conference of Commissioners of Uniform State Laws, also known as the Uniform Law Commission, has adopted the Uniform Collaborative Law Act (UCLA). The American Bar Association (ABA) has a Collaborative Law Committee within its Section of Dispute Resolution.

Standards for the Practice of Collaborative Law

Three states were early adopters of statutes concerning CL. According to GCLC (n.d.-a), a 2001 Texas statute placed CL procedures in the Family Code, and a 2003 North Carolina statute was patterned after the Texas statute. The statute enacted in California in 2007 requires a written agreement, but does not specifically define the elements of the collaborative law process (GCLC, n.d.-a). The California statute was similar to the Texas statute but allows the use of CL in any family law proceeding, whereas the Texas law was limited to divorce. Utah enacted a statute that requires all divorcing couples with a minor child to be informed of options for proceeding, including CL. Both Texas and Utah subsequently enacted UCLA. A number of courts sanction CL through amendments to their court rules (GCLC, n.d.-a).

In 2004, GCLC (which had originated as the Texas Collaborative Law Council) promulgated *Protocols of Practice for Collaborative Lawyers* (GCLC, 2004). This comprehensive document addresses the lawyer-client relationship, relationships between the participating lawyers, the role of experts and their relationship to the lawyers, principles and stages of the collaborative process, and legal documents and proceedings. The document is updated periodically and is available on the GCLC website (www.collaborativelaw.us). In addition to the protocols of practice, the GCLC website contains numerous articles concerning the practice of CL, including in business/commercial and health law contexts, as well as document templates (GCLC, n.d.-b).

In addition to its principles of CL practice described earlier, IACP has promulgated minimum standards for CL practitioners, CL basic training, and CL trainers and ethical standards for CL practitioners (IACP, n.d.-c). As described on the organization's website (www.collaborativepractice.com), the standards are voluntary and "a work-in-progress." Practitioners who comply with the IACP standards may identify themselves as having met IACP minimum Standards for Collaborative Practice; the IACP does not enforce or certify compliance.

The document, *IACP Minimum Standards for Practitioners* (IACP, 2012), outlines basic requirements for attorneys and mental health and financial professionals engaging in CL. Each of these types of professionals is expected to maintain the licensure and other requirements of the

bodies that regulate their respective profession. In addition to basic training and experience in specified areas of their field, they are expected to have the following training:

> Lawyer practitioners. 12 hours of either collaborative law training or interdisciplinary collaborative training; 30 hours of training in client-centered, facilitative conflict resolution; and 15 hours of training in interest-based negotiation, communication skills, collaborative practice (beyond the 12-hour minimum), advanced mediation, or basic professional coaching.
>
> Mental health practitioners. 12 hours of basic interdisciplinary collaborative training; 30 hours of training in client-centered, facilitative conflict resolution; 15 hours of training in basic professional coaching, communication skills, collaborative practice (beyond the 12-hour minimum), or advanced mediation; and three hours of training in basics of family law in his/her jurisdiction.
>
> Financial practitioners. 12 hours of basic interdisciplinary collaborative training; 20 hours of training in the financial fundamentals of divorce; 30 hours of training in client-centered, facilitative conflict resolution; and 15 hours of training in communication skills, collaborative practice (beyond the 12-hour minimum), advanced mediation, or basic professional coaching.

IACP Minimum Standards for a Collaborative Basic Training (IACP, 2004) outlines the objectives, content, and delivery of the basic training envisioned by the minimum standards for practitioners described above. A participant who completes the basic training should have the knowledge of the theories, practices, and skills of CL needed to begin collaborative practice. *IACP Minimum Standards for Collaborative Trainers* (IACP, n.d.-d) establishes the knowledge, experience, certifications, and levels of training expected of professionals delivering CL training. Specific requirements are identified for attorneys, child specialists, financial professionals, and coaches.

The document, *IACP Ethical Standards for Collaborative Practitioners* (IACP-n.d.-e), is undated, but the IACP website reports that the standards were redrafted and approved by the IACP Board of Directors in 2008. These standards address practitioner competency, conflicts of interest, confidentiality, scope of advocacy, and disclosure of business practices. The ethical standards require a professional participating in a collaborative process to have 12 hours of Collaborative Practice/Collaborative Law training or Interdisciplinary Collaborative training. There is no mention of the additional training requirements contained in *IACP Minimum Standards for Practitioners*.

The ethical standards also address the minimum elements of a collaborative participation/fee agreement, namely full disclosure of information and prohibition of contested court procedures. The ethics standards include practice protocols regarding obtaining client consent to share information among the professionals and terminating processes in which a party does not adhere to the participation agreement. Specific ethical standards for neutral professionals, coaches, and child specialists are included.

The ABA's only official standard regarding CL is Formal Opinion 07-477 on ethical considerations in the practice of CL (ABA, 2007), which is discussed later in this chapter.

Uniform Collaborative Law Act (UCLA)

The Uniform Law Commission is an organization of attorneys, including legal scholars and appellate judges, appointed by state governments to draft model legislation for state legislatures. The Uniform Law Commission first adopted UCLA in 2009. In response to objections raised by the ABA, the Commission approved revisions in 2010 that (1) allow a state to adopt the provisions of UCLA either as legislation or as a court rule; (2) provide the option of limiting the scope of the act to family law matters; and (3) provide discretion for courts to approve stays of pending proceedings, rather than have automatic stays, when the court is notified that parties are participating in a collaborative process (Uniform Law Commission, 2011). Consistent with the first of these revisions, the document is now sometimes called the Uniform Collaborative Law Rules/Uniform Collaborative Law Act (UCLR)/(UCLA).

UCLA seeks to provide consistency across jurisdictions by establishing formal guidelines for the CL process and standards of conduct among CL lawyers. UCLA establishes key features of CL, including the participation agreement, disqualification of attorneys from representing their clients in court proceedings, and voluntary disclosure of information between parties. The act also specifies the legal status of nonparty participants, such as financial and mental health professionals. Further, the act authorizes legal enforcement of all agreements reached through the CL process.

UCLA states that the CL process begins with the signing of a participation agreement and concludes with the signing of a settlement agreement, although any party may unilaterally terminate the process at any time without specifying a reason. The participation agreement must be a written record that describes the parties' intention to resolve their dispute through the CL process and the nature and scope of the dispute and identifies the lawyers representing each party. The agreement must be signed by both parties and must include statements from both lawyers confirming their representation. The agreement may include additional provisions that either the parties or their lawyers believe necessitate formal agreement.

Under the act, as revised, when parties notify the court that they are in a collaborative process, the notice serves as an application to the court for a stay in proceedings. A court may require status reports while the proceeding is stayed. The scope of the information that can be requested, however, is limited to ensure confidentiality of the collaborative law process. The act also authorizes the court to issue emergency orders during the stay of proceedings to protect the health, safety, or welfare of a party, a family member, or a member of the household. Orders may also be issued to protect financial interests of a party.

If the CL process is terminated prior to settlement, the CL lawyers are disqualified from representing their clients in traditional court proceedings and the parties must seek new counsel. The disqualification provision further applies to lawyers who work in associated firms, unless (1) the client qualifies as low-income and the representation is pro bono, or (2) the client is a

government or governmental agency, provided the participation agreement addresses this arrangement, and the associated law firm has in place procedures isolating the original CL lawyer from participation.

Under UCLA, prior to the signing of a participation agreement, a collaborative lawyer is required to provide a prospective client with sufficient information about the benefits and risks of the CL process and other alternatives for the client to make an informed decision about using CL. The collaborative lawyer must also explain how the process may be terminated and the effect of the disqualification requirement. Collaborative attorneys must make reasonable efforts to determine if the parties have a history of a coercive or violent relationship and must provide safeguards if such a history exists.

UCLA allows the parties to specify, within the requirements of state law, the extent to which oral and written communications exchanged during the CL process are confidential. It also establishes evidentiary privilege precluding certain statements from being considered as evidence in a court proceeding, provides for the possibility of waiver of privilege, and identifies communications to which privilege does not apply.

UCLA as originally drafted was supported by the ABA's Section of Dispute Resolution, Section of Individual Rights and Responsibilities, and Family Law Section; a number of state and local Bar associations; and many members of the ABA House of Delegates. In 2010, however, when the act was put before the ABA House of Delegates for approval, objections were raised by the Section of Litigation and others, leading to withdrawal of the act from consideration (Uniform Law Commission, 2011).

In 2011, the revised UCLR/UCLA was submitted to the ABA House of Delegates but was rejected by a vote of 298 to 154. The major concern voiced by ABA opponents was that the act would open the door to regulation of lawyers by state legislatures, contrary to the legal profession's tenet of self-regulation (Zahorsky, 2011). Postings by UCLA proponents on ABA web pages following rejection of the act suggested that opposition was rooted in the profession's commitment to preserve attorneys' lucrative litigation practices.[5]

To date, six states, Hawaii, Nevada, Ohio, Texas, Utah, and Washington, as well as the District of Columbia have adopted UCLA (Uniform Law Commission, n.d.-b). UCLA is also being considered by legislatures in Alabama, Illinois, Massachusetts, New Mexico, Oklahoma, and South Carolina during their 2013 sessions (Uniform Law Commission, n.d.-b).

[5] The comments by Rob Harvie and Sherrie R. Abney can be found following the Zahorsky (2011) article at http://www.abajournal.com/new/article/the_aba_house_of_delegates_rejected_resolution_110b/ (accessed November 10, 2012). A comment by Elaine (no last name provided) can be found at http://www.abanow.org/2011/07/2011am110b/ (accessed April 26, 2013).

The Maryland Uniform Collaborative Law Act, modeled after UCLA, was introduced in the 2012 session of the Maryland General Assembly as HB 477, co-sponsored by Delegates Kathleen Dumais and Jeff Waldstreicher. Following review of the bill, the Family Law, Alternative Dispute Resolution, and Legislative committees of the Maryland Judicial Conference all concluded that the provisions embodied in UCLA are more appropriately adopted as court rules. The bill received an unfavorable report by the House Judiciary Committee and was withdrawn (Maryland General Assembly, 2012). The bill was not reintroduced in 2013, and the expectation is that a change to court rules will be pursued instead.

Ethical Concerns Regarding Collaborative Law

According to GCLC, legal ethics opinions in thirteen states have addressed the practice of CL. These states, in chronological order of the opinions, are: Minnesota (1997), North Carolina (2002), Pennsylvania (2004), Maryland (2004), Kentucky (2005), New Jersey (2005), Colorado (2007), Washington (2007), Missouri (2008), and South Carolina (2010). All state ethics opinions, except one, approve the use of Collaborative Law with appropriate precautions, such as the importance of obtaining informed consent (GCLC, n.d.-c). The exception is Colorado where in 2007 the Bar Association ethics committee ruled that collaborative practice is impermissible because the four-way agreement creates a non-waivable conflict of interest under Rule 1.7(a)(2) of the ABA Model Rules of Professional Conduct (ABA, 2007).[6]

Although the ABA has not embraced UCLA, the organization has taken the position that collaborative practice is consistent with the rules of ethics for lawyers. In 2007, following the adverse Colorado opinion, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 07-477, which states,

> "…we agree that collaborative law practice and the provisions of the four-way agreement represent a permissible limited scope representation under Model Rule 1.2, with the concomitant duties of competence, diligence, and communication. We reject the suggestion that collaborative law practice sets up a non-waivable conflict under Rule 1.7(a)(2)." (ABA, 2007, p. 3)

Subsequently, the Collaborative Law Committee of the ABA Section of Dispute Resolution drafted a white paper addressing the ethical issues considered in the state court opinions and the formal ABA opinion. The paper, which is still in draft form, summarizes the opinions and provides guidance for attorneys' compliance with ethical standards (ABA, 2009).

The major issues that have been raised regarding CL in ethics inquiries and academia are (1) conflicts of interest; (2) limited representation; (3) proper screening of cases appropriate for the model; (4) zealous advocacy; (5) disqualification agreement; (6) confidentiality; and (7) the

[6] The opinion does not preclude the practice of CL in Colorado. The IACP website lists more than 30 CL attorneys in Colorado (IACP, n.d.-f).

use of neutral experts. These ethical issues can be managed by the CL attorney thoroughly explaining the CL process to clients, obtaining informed consent prior to representation, and adhering to the standards of legal practice.

Neutral Experts in Collaborative Law

A key feature of CL is the engagement of neutral experts, such as financial planners, mental health professionals, and social workers in the process. Financial experts can explain and help clients understand their options under specific circumstances and different projections. Since the financial expert works for the process rather than for either party, he or she can provide information that both parties can utilize. The roles of mental health professionals and of social workers can intersect, with both serving as divorce coaches and child specialists. Coaches can help divorcing parties understand and cope with emotional issues associated with transitioning to new relationships and family structures. They also help with issues regarding the children during or after the divorce. Because of the neutral role of the experts, the parties ideally accept the information and opinions they provide more readily than if the professionals were working on behalf of only one of the parties.

Non-lawyer professionals may be included in the process in several different ways (Mosten, 2008). The first is an attorney-driven approach in which the CL attorneys may refer their clients to experts or engage joint neutral experts (Mosten, 2008). The second approach is for non-lawyer professionals to be added to the CL team on an ad hoc basis as needed (Mosten, 2008). In the third approach, non-lawyer professionals are equal members of the collaborative team from the beginning and participate in the design of the process and the strategy for representing the client (Tesler, 2008). The team model described by Lande (2011) and referenced in the IACP research discussed below corresponds to this third approach to CL. The first two approaches correspond to the referral model described by Lande (2011) and referenced in the IACP research.

The collaboration among professionals must occur within the boundaries of attorneys' rules of conduct, which place restrictions on the business relationships of lawyers and non-lawyers. While the Maryland Ethics Committee found no fault with a non-profit CL organization comprising family law attorneys, mental health professionals, and investment advisers as long as it was an educational organization rather than a marketing entity, the committee did caution the lawyers to carefully review its prior opinions concerning "the propriety of lawyers engaging in business with or receiving referrals from non-lawyers" (Maryland State Bar Association, 2004, p. 2).

Collaborative Law in Practice

IACP reports having 4,200 members in 24 countries (IACP, n.d.-b), including 3,179 members in 235 practice groups in the U.S. (IACP, n.d.-f). The IACP website provides listings of practice groups around the world. Of the 42 states with CL practice groups listed on the IACP website, California has the largest number (36), followed by Texas (21), Washington (19), New York (18), and Florida and Virginia (13 each); nine practice groups in Maryland are listed on the

IACP website (IACP, n.d.-f). By drilling down on the IACP website, the user can find information on each CL practice group and each IACP member, including hours of collaborative practice training by topic.

Lande (2011) refers to the base of empirical research on CL as "sketchy" (p. 257) for two reasons: first, because the number of empirical studies conducted on CL to date remains small, and second, because of the "methodological challenges" to studying CL (p. 259). A common methodological challenge is the effect that selection bias has on study results. Individuals that complete a survey, respond to requests for information, or agree to be interviewed may differ from those who decline and from the overall population. The responses of these self-selected individuals may not be representative. All the past research and the present study are subject to this bias. Nonetheless, the results of these studies of CL practitioners and their clients provide insight into small samples of an emerging field.

IACP undertook an extensive effort to collect data on CL cases between October 16, 2006, and July 6, 2010 (Wray, 2011a). From October 2006 through March 2008, data on 415 cases were reported directly to IACP by an unknown number of IACP members. In April 2008, a more user-friendly survey was implemented and, from April 2008 into July 2010, data on 518 cases were reported to Crescent Research, bringing the total number of cases in the study to 933 (Wray, 2011a). The vast majority of the cases (815) were from the U.S.; 97 cases were from Canada, 17 from England, 2 from Australia, and 1 from Scotland (Ware, 2011a). The data on the 518 cases compiled by Crescent Research was submitted by 157 IACP professionals (Wray, 2011a).[7] The data were analyzed by IACP over the next year, and the following findings were reported by Wray (2011a):

Training and Perspectives of Professionals

- Among professionals for whom training was reported, the vast majority (97 percent of lawyers, 91 percent of financial professionals, and 98 percent of mental health professionals) had received basic collaborative training. More than three-quarters of each group had received supplemental collaborative training.
- Lawyers ranked their responsibilities in collaborative law to be first to their clients, second to the collaborative process, and third to the clients' families.

Case Characteristics

- As noted earlier, 97 percent of the cases involved divorces.

[7] The professionals reporting cases during the April 2008 to July 2010 time period represent about four percent of IACP members. The 518 cases reported by 157 professionals over 2.25 years equates to an average of 1.5 cases per professional per year.

- Eighty-four percent of the cases involved children, and in at least 62 percent of the cases in this group, children were subject to the legal process.

Client Characteristics

- Roughly 60 percent of clients (both husbands and wives) were between 40 and 54 years of age. Wives outnumbered husbands among clients 39 and younger, and husbands outnumbered wives among clients 55 and older.
- Three-quarters of wives and 80 percent of husbands had a four-year college education or higher.
- Client earnings varied greatly with gender, with the majority of husbands (53%) but only 13 percent of wives earning $100,000 or more. The majority of wives (62%) but only 16 percent of husbands earned less than $50,000.[8]
- Most clients' estates (56%) were worth $500,000 or more, including 17 percent valued at $2 million or more. Only 5% of estates were worth less than $50,000.

Collaborative Process

- The team model, in which non-lawyer professionals are engaged at the start of the CL process, was used in 43 percent of reported cases; 14 percent of cases used the referral model, in which lawyers refer their clients to experts as the CL process progresses; and 43 percent of cases involved only lawyers.
- Among cases using the team model, 82 percent involved a mental health professional and 71 percent involved a financial professional. Among cases using the referral model, 45 percent involved a mental health professional and 71 percent involved a financial professional.
- At least one face-to-face meeting with one or more professionals and both clients occurred in 96 percent of cases.
- Four-way meetings of both lawyers and both clients were held in 63 percent of cases. In cases that had four-way meetings, an average of four such meetings occurred.
- More than half of cases (56%) included face-to-face meetings with all core professionals present. In cases that had such meetings, an average of two such meetings occurred; in 21 percent of these cases five or more meetings occurred with all core professionals present.
- Meetings involving only one client were held with a mental health professional in 26 percent of cases and with a financial professional in 23 percent of cases.

[8] Given that 97 percent of the cases involved divorce, it is reasonable to assume that the clients in each reported case were a husband and a wife. Since husbands and wives were equally represented, it can be inferred that 33 percent of clients (the average of 53 percent and 13 percent) earned $100,000 or more and 39 percent of clients (the average of 62 percent and 16 percent) earned less than $50,000.

- Forty-four percent of cases were completed within six months, and nearly 80 percent were completed within one year. Three percent of cases required more than two years to complete; 14 percent were completed in less than three months.

Outcomes

- Eighty-six percent of cases settled with an agreement on all issues; an additional two percent of cases reconciled; less than two percent of cases had a partial collaborative agreement.

Costs

- The average total cost for all core professionals was $24,185.
- The average cost computed for each profession was: lawyers - $20,884 for both; mental health professional(s) - $3,858; financial professional - $4,421.
- The average cost for all core professionals computed by case difficulty was: easy cases - $12,127; moderate cases - $21,633; difficult cases - $32,588.
- The average cost for all core professionals in cases with children subject to the legal process was $25,576, compared to $17,826 in cases with no children.
- The average cost for all core professionals was $34,071 in cases using the team model, $22,030 in cases using the referral model, and $15,667 in lawyer only cases.
- Average costs varied by location. For example, total costs in Minnesota averaged $14,054, while costs in California averaged $41,485.

During the same timeframe that IACP obtained the information above from collaborative professionals, the organization conducted a survey of client experiences to which 98 clients responded. Based on data provided by IACP (2010), the self-reported characteristics of these clients are similar to the client characteristics reported by the professionals. The following findings were extracted from IACP (n.d.-g), Wray (2011b), and Wray (2011c):

Client Characteristics

- There were slightly more males (51%) than females (49%) among the respondents.
- Just under three-quarters of each group (71% of men and 73% of women) were middle-aged (40 to 59 years of age).
- Only 7 percent of respondents reported household income below $50,000; 84 percent reported household income of $100,000 or more; and 48 percent had household income of $200,000 or more.
- Client income varied greatly with gender, with 67 percent of males but only 19 percent of females reporting individual income of $100,000 or more. None of the

male respondents earned incomes under $35,000, but 37 percent of the female respondents did.[9]

- More than three-quarters (81%) of female respondents reported that their male spouses had incomes of $100,000 or more, and 33 percent reported their male spouses' incomes at $200,000 or more. Of the male respondents 39 percent reported that their spouse's (the female's) income was under $35,000 and none of the female respondents reported that their spouse's income was less than $35,000.

Client Reasons for Pursuing CL

- There are multiple referral sources for clients who choose CL, including spouse (26%), friend (19%), the Internet (17%), the client's own collaborative lawyer (12%), mental health professional (11%) and another lawyer (9%).
- Respondents were informed of the following options for addressing their divorces prior to choosing CL: traditional court process (95%), mediation (85%), addressing divorce on their own (63%).
- Of respondents informed of the traditional court process, 51 percent considered using it prior to choosing CL. Of respondents informed of mediation, 40 percent considered using it. Of respondents informed of the option of handling their own case, 35 percent considered doing so.
- Clients identified the following expectations as "very important" to their decision to use the CL process: results in a better outcome; is better focused on what is most important to them (significantly more important for female respondents than for males); is less confrontational and adversarial; is more respectful; and provides more client control over the outcome.
- The two most common reasons for choosing CL over mediation (17 responses each) were that clients felt they needed legal representation and clients' spouses suggested or requested the CL process.

Client Experiences

- Among all respondents, 75 percent were somewhat or extremely satisfied with collaborative practice, overall, and with the collaborative process, and 72 percent were somewhat or extremely satisfied with the outcome of their case.
- Slightly higher percentages of clients whose cases settled reported being somewhat or extremely satisfied with collaborative practice, overall, (79%); the collaborative process (77%); and their outcome (79%).
- Whether or not a financial or mental health professional was retained did not affect clients' satisfaction.

[9] Overall then, 18 percent of respondents (.37 x .49) had incomes below $35,000, and 34 percent of respondents (.67 x .51 + .19 x .49) had incomes of $100,000 or above.

- Average client ratings of their own lawyers ranged from 4.06 to 4.56 across 10 functions on a 5-point scale, with 5 being extremely satisfied, 4 being somewhat satisfied, and 3 being neutral; average client ratings of the other lawyer ranged from 3.40 to 3.68.
- Average client ratings of financial professionals ranged from 3.94 to 4.44 across a list of 10 functions; ratings for mental health professionals ranged from 3.72 to 4.35 across a list of 16 functions.
- The client's lawyer, the mental health professional(s), and the financial professional all received average ratings higher than "somewhat satisfied" for their listening skills and maintaining respect for clients and the client's viewpoint.
- More than half the clients (57%) said they would definitely refer a person in need to collaborative practice, and an additional 18 percent said they would probably refer, while 10 percent said they were unlikely to refer a person or definitely would not do so.
- When "definitely would refer" and "probably would refer" are considered together, clients with cases that involved a financial professional and or mental health professional(s) were less likely to refer someone to the collaborative process.
- About 80 percent of clients viewed the fees they paid to CL professionals as "very reasonable" or "somewhat reasonable". The percentages by profession were: attorneys – 81 percent; financial professionals – 81 percent; mental health professionals – 79 percent.

Outcome

- Ninety percent of respondents reported that they reached settlement in the CL process; 10 percent terminated prior to settlement of all issues. None of the responding clients reconciled during CL. Outcomes were not affected by whether a financial or mental health professional was retained.

In addition to the research by IACP, a few other studies provide insights into the use of collaborative law in the U.S. and Canada. These studies are presented chronologically below.

Between 2001 and 2004, Macfarlane conducted a study of 16 CL cases for which 150 interviews were conducted with clients, lawyers, and other collaborative professionals in two communities in the United States (Minneapolis and San Francisco) and three communities in Canada (Medicine Hat, Regina, and Vancouver) (Macfarlane, 2005). The study revealed the following:

Attorney Perspectives on CL

The primary motivation for CL lawyers was practicing law in a manner that better fit their beliefs and values than did traditional litigation. There was consensus that the CL process "reduces the posturing and gamesmanship of traditional lawyer-to-lawyer

negotiation" (Macfarlane, 2005, p. 30). A secondary motivation was the ability to provide better client services.

Client Reasons for Pursuing CL

For clients, the principal goals of the collaborative process were reduced cost and speedier results. Many also voiced a desire to minimize the destructiveness of the separation on their children.

Collaborative Process.

A full team approach was used in just two of the 16 cases studied, with both cases engaging mental health professionals. In seven other cases, child welfare specialists or financial advisors were brought in at some stage in the process. No professionals other than lawyers participated in the remaining seven cases. Many lawyers reported finding it difficult to persuade clients that they needed to retain additional professionals from the start, but instead relied on ad hoc referral as the need arose. Some therapists were uncomfortable when the boundaries were blurred between their role and that of some lawyers who they felt assumed a therapeutic relationship with the client.

Client Experiences.

Participants felt freer to speak candidly and think creatively about alternatives without the threat of exploitation by the other side. On the other hand, at least three clients felt trapped in the process by the fact that failing to settle forces a participant to change attorneys and engage in litigation. Parties usually have more information at hand and share a more constructive spirit than is often found in traditional lawyer-to-lawyer negotiation, but sometimes clients felt as if their lawyers underestimated the level of emotion that would inevitably occur throughout the process and thus felt pressure to deny their feelings in order to maintain the "harmony" of the CL process (Macfarlane, 2005, pp. 34-36). Some clients felt that they were not getting clear and specific legal advice when they felt they needed it and sometimes expressed a desire for their lawyer to be more assertive with the other side about the limits of their entitlements. Some collaborative lawyers considered themselves as serving the interests of the whole family rather than just their particular client's goals, a view not always embraced by clients (Macfarlane, 2005, pp. 46-49). In cases that involved non-legal professionals, clients were generally satisfied with their contribution. This was particularly true with respect to financial advisors. Respondents were more ambivalent about using a counselor or a coach, and many clients were already seeing a therapist independent of the collaborative process.

Outcomes

CL case outcomes "match[ed] or exceed[ed] the legal standard in most respects" (Macfarlane, 2005, p. xii) and did not seem very different from traditional litigation-negotiation processes. Many outcomes, though, "reflected value-added components, including creative plans for co-parenting and access, and support paid in different formats, and enhanced communication" (Macfarlane, 2005, p. xii). In addition, parties were able to develop "trial" resolutions before committing to a final outcome, something that litigation rarely allows (Macfarlane, 2005, p. xii).

In 2003, Schwab surveyed collaborative lawyers and clients from eight well-established local practice groups in seven states (California, Florida, Massachusetts, Minnesota, Ohio, Texas, and Wisconsin) and received responses from 71 attorneys (a response rate of 19.8 percent) and 25 clients (a response rate of 7.1 percent) (Schwab, 2004). Schwab's findings included the following:

Attorney Characteristics

The collaborative lawyers surveyed averaged 60 years old with an average of 20 years of legal practice; the majority were women who have spent most of their careers dealing with divorce. Eighty percent of the collaborative lawyers practice in small firms, including 42 percent who were solo practitioners. All lawyers had received CL training, with an average of 24.7 hours of training reported. CL attorneys reported that 23 percent of their divorce cases were collaborative representations. Among the 71 attorneys that responded, 5 had not handled any CL cases yet. The remaining 66 attorneys had been involved in a total of 748 collaborative representations, or an average of more than 11 cases per attorney.

Client Characteristics

All the clients identified themselves as Caucasian. The average client age was 49, with 84 percent having four-year college degrees and 44 percent having annual pre-divorce combined household incomes between $100,000 and $200,000 and 40 percent having household incomes greater than $200,000. The average length of the dissolved marriage was 22.2 years; 72 percent of clients reported at least one child under the age of 18 at the time of divorce.

Client reasons for Pursuing CL

Concern over the impact on children was the greatest motivator for choosing CL for 44 percent of responding clients, while 32 percent identified concern for a co-parenting

relationship with their spouse. Twenty percent of respondents ranked the lawyer's recommendation as the primary factor in choosing CL, while another 24 percent identified the lawyer's recommendation as their second most important consideration. Another 20 percent of respondents identified cost savings as the most important factor, and 80 percent ranked cost savings as holding some level of importance in their decision to use the CL process.

Collaborative Process

The clients surveyed spent from 1.5 to 16 months in the collaborative process but on average took 6.3 months to settle. On average, lawyers billed their most recent collaborative clients for 28.7 hours of work, with an average of 4.3 four-way meetings per case. In regard to a lawyer's duty in the CL process, over 84 percent of responding lawyers said they either disagreed or strongly disagreed with the statement that "Collaborative lawyers are more like neutrals than like counsel for individual clients" (Schwab, 2004, p. 380).

Client experiences

When asked to rate their level of satisfaction with the outcome of their divorce on a scale of one (least) to five (most), clients responded with an overall average of 4.35. Of the clients who reached settlement, a slight minority (45.5 percent) said that the disqualification provision of the CL agreement had kept them at the table, while the other 54.5 percent said that it had not.[10] Those who said that the disqualification provision did not influence them to keep negotiating reported an average satisfaction level of 4.5 while those who said it had kept them at the table still reported a favorable satisfaction level (just over 4).

Outcomes

Of the 748 cases handled by the attorneys responding to the survey, 654 were settled for an overall settlement rate of 87.4 percent. The lawyers reported a higher settlement rate of 92.1 percent for the most recent cases they handled.

[10] By comparison, 35 percent of lawyers said the disqualification provision was very significant, 43 percent said it was somewhat significant, and 22 percent said it was not at all significant in influencing their client in their last CL case to remain in negotiations.

Costs

Clients reported spending from $1,200 to $20,000, and the average case expenditure was $8,777.

In 2006, Keet, Wiegers, and Morrison conducted interviews in Saskatchewan, Canada, of seven clients who used CL and one client who attended an initial four-way meeting that did not turn into a CL case. The researchers also conducted interviews with 12 lawyer members of the local CL practice group, including six men and six women. Their study focused on power imbalances between clients in the CL process, and they documented the following findings (Keet et al., 2008):

Client Characteristics

The clients included three men and five women, with relationship lengths averaging 20 years. More than half of the clients reported income in the mid to high range, although three were completely or highly dependent on income from their spouses. None of the clients identified as Aboriginal or as members of ethnic minorities.

Client Experiences

"[O]n the whole the clients viewed the process as one that involved 'give-and-take' and compromise" (Keet et al., 2008, p. 164). Study participants identified economic dependency as a challenge to the process which was manifested in a number of ways, including: lack of income to maintain negotiations or litigation, lack of access to the assets of the marriage, and perceived lack of status or credibility during negotiations. Three of four participants who noted power imbalances during the existence of their relationships felt as if the CL process reinforced the imbalance in their relationships. One participant, however, felt as if the CL process allowed her to convey her authentic voice, be heard, and feel safe, reflecting the transformative experience that CL aspires to achieve (Keet, et al., 2008, p. 171). The study suggested that using four-way meetings as the primary forum for communication between client and attorney could leave some clients "feeling unprotected" (Keet et al., 2008, p. 177). Similarly, the study found the potential for an unequal sharing of "power" between lawyers that could lead to reinforcing a sense of isolation and disempowerment of a client (Keet et al., 2008, p. 182). On the other hand, where lawyers collaborated to defuse power imbalances, the potential existed to provide emotional support and facilitate the process (Keet et al., 2008, p. 180). The study also revealed that pressure surrounds the disqualification provision, in particular for clients subject to perceived power imbalances. These clients felt that after committing to the process, the disqualification provision gave their spouse an advantage because of the ability to threaten not to negotiate (Keet et al., 2008, p. 191). Overall, the

clients in the study were less convinced by the rationale for the disqualification provision than were the lawyers (Keet et al., 2008, p. 192). Four of the study subjects misunderstood the primary function of the disqualification agreement as an assurance of confidentiality rather than good faith commitment to negotiate (Keet et al., 2008, p. 192). Client perceptions of success of the process were closely related to whether an agreement resulted and to process length. Most clients were unprepared for how long the process ultimately took.

A study by Hoffman (2008) did not rely on a survey or interviews, but rather on a review of cases handled at the author's law firm, the Boston Law Collaborative, during the period 2004 to 2007. The study compared characteristics and outcomes of cases handled by litigation and six alternative dispute resolution methods: collaborative practice, mediation (pre-nuptial), mediation (divorce), coaching from the sidelines, cooperative process, and negotiation/litigotiation[11].

Case Characteristics

The study focused on 199 cases, including 191 divorces and eight prenuptial agreements. The distribution of cases by dispute resolution method was: collaborative practice – 27 cases (13%); mediation (pre-nuptial) – 8 cases (4%); mediation (divorce) – 55 cases (28%); coaching from the sidelines – 7 cases (4%); cooperative process – 11 cases (6%); negotiation/litigotiation – 75 cases (38%); and litigation – 16 cases (8%).

Client Characteristics

Overall, the median net worth of the parties was approximately $2 million, and their average annual household income was approximately $175,000. The median net worth of the parties in cases handled through collaborative practice was $3 million. Among cases handled through litigation, the median net worth of the parties was $1 million.

Outcomes

The study found "no appreciable differences in the settlement rates" for the six alternative dispute resolution processes studied, including CL, each of which exceeded 90 percent (p. 33).

[11] Hoffman (2008) uses the term litigotiation, which he attributes to Professor Marc Galanter, to describe a combination of negotiation and litigation.

Costs

> The median cost of litigation ($77,546 per client) was nearly $60,000 per client higher than the cost of handling a case through collaborative practice ($19,723 per client).[12]

According to Hoffman, the finding regarding costs calls into question Macfarlane's (2005) finding that clients feel entrapped in the collaborative process because of their investment in the collaborative attorney. Instead, in Hoffman's view, it may be the high cost of pursuing divorce through litigation that is the issue.

[12] It should be noted, though, that the cases handled through collaborative practice had a lower average rating on a contentiousness scale created by Hoffman than did the cases handled through litigation. Hoffman presents the contentiousness rating as one measure of the effect of each method, but it is possible that the level of contentiousness led to the selection of a particular dispute resolution method. The higher costs of litigation may be due in part to differences in the nature of the cases at the outset.

Collaborative Practice in Maryland

Attorneys and collaborative professionals in Montgomery County were the first in Maryland to use CL, beginning in about 2000. As noted earlier, the IACP website (IACP, n.d.-f) lists nine practice groups in Maryland:

- Anne Arundel Collaborative Professionals, Inc.
- Collaborative Council of Western Maryland, Inc.
- Collaborative Dispute Resolution Professionals, Inc.
- Collaborative Divorce Association
- Collaborative Professionals of Southern Maryland, Inc.
- Collaborative Roundtable at Baltimore (CRAB)
- Howard County Collaborative Professionals
- Maryland Collaborative Law Association, Inc.
- Maryland Collaborative Practice Council

Each practice group includes both lawyers and other members of the collaborative team including divorce coaches, mental health professionals, financial planners, realtors, and mortgage professionals. The last group listed by IACP, the Maryland Collaborative Practice Council (MCPC), is the statewide organization for CL in Maryland. MCPC's purpose is "to support Collaborative Practice Groups, advocate statewide on legislative, executive, and judicial initiatives, and to advance the use of the Collaborative Process as a method of dispute resolution" (Maryland Collaborative Practice Council, 2009).

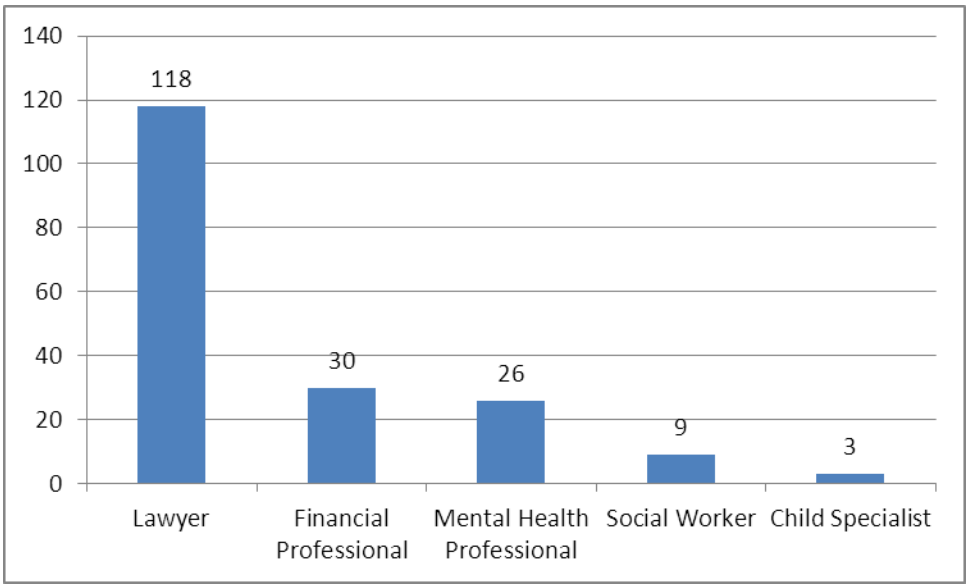
Based on the listings on the IACP website (IACP, n.d.-f), the study team identified 186 individual members among the Maryland practice groups registered with IACP. Members of these practice groups are spread across Baltimore City, 11 Maryland counties, and three neighboring jurisdictions (see Table 1). Half of these practitioners are located in Montgomery County. In addition to the members of IACP-registered practice groups tabulated here, CL attorneys interviewed for this study estimated that as many as 300 to 400 lawyers in Maryland have been trained in CL but are not members of any practice group.

Table 1. Distribution of Practice Group Members by Jurisdiction

Jurisdiction	Number of Practice Group Members		All Practice Group Members	
	Attorneys	Other Professionals	Number	Percent of Total
Maryland jurisdictions:				
Anne Arundel County	5	3	8	4
Baltimore City	12	5	17	9
Baltimore County	8	1	9	5
Calvert County	1	1	2	1
Carroll County	1	0	1	<1
Frederick County	7	5	12	7
Harford County	1	0	1	<1
Howard County	14	8	22	12
Montgomery County	55	38	93	50
Prince George's County	0	2	2	1
Washington County	7	4	11	6
Wicomico County	1	1	2	1
Washington, DC	3	0	3	2
Fairfax County, VA	2	0	2	1
Martinsburg, WV	1	0	1	<1
Total	118	68	186	100

The other collaboratively trained professionals in the IACP listings of practice group members include financial and mental health professionals, social workers, and child specialists. Using the listings on the IACP website, the study team determined the distribution of professionals in CL practice groups by type of profession (see Figure 1).

Figure 1. Distribution of Professionals Listed by IACP as Members of Maryland Collaborative Law Practice Groups by Type



Collaborative Practice and the Maryland Courts

CL is not recognized in Maryland statute and is not mentioned in the current Maryland Rules of Procedure-Alternative Dispute Resolution (Title 17), which took effect January 1, 2013. As noted above, a Maryland version of UCLA was introduced in the General Assembly in 2012 but was eventually withdrawn with a recommendation to pursue court rules on the topic instead.

As part of the study of ADR practices in family law cases, a 2010 survey of the Family Support Services Coordinators (FSSC) included questions on the practice of CL. The survey of FSSC in each Maryland jurisdiction revealed that CL awareness and utilization varies across the state. FSSC from Anne Arundel, Carroll, and Howard Counties indicated knowledge of the process and involvement of the court in staying cases pending collaborative agreements. FSSC from Allegany, Baltimore, Calvert, Cecil, Frederick, Harford, Prince George's, and Worcester Counties indicated awareness of the process in their county, but no formal connection or involvement of the court. The remaining jurisdictions either indicated no awareness or availability of CL or provided no response.

FSSC in three counties, Anne Arundel, Carroll, and Howard, reported that processes exist to stay cases pending collaborative agreements if a case has been filed and the parties subsequently decide to use CL. Granting a motion to stay the proceedings removes the case from case management time constraints. The stay also frees the parties of prejudice as to claims of

support and alimony if the matter does not ultimately resolve through CL. The court schedules regular status conferences to monitor progress in resolving the matter.

No data are available on the number of cases that are filed and then stayed because the parties chose to utilize CL. The number choosing CL after filing is thought to be small because both counsel involved in the case are not likely to be collaborative practitioners and one or both parties mayneed to hire new counsel.

Despite the lack of formal recognition of CL in Maryland, the Maryland CL attorneys interviewed for this study reported that the informal relationship among CL practitioners, practice groups, and the courts is friendly and cooperative. In general, the courts do not actively refer cases to CL or endorse the process. The FSSC in Kent County, however, indicated that she referred some parties to CL. According to the CL attorneys interviewed for the study, the absence of CL referrals in most Maryland courts is due at least in part to a lack of knowledge and information on CL. The only current means of documenting the use of CL for the courts is a statement included by some practitioners at the beginning of the documents filed with the court indicating that the agreement was reached through the collaborative process.

The six Maryland CL attorneys that were interviewed revealed a range of CL workloads, with some attorneys reporting an average of 1 case per year and others reporting 10 cases in a year. One CL attorney stated that she manages as many as 10 CL cases at any one time. Another estimated that she had handled 100 CL cases since 2004.

AOC's Department of Family Administration has undertaken a two-pronged effort to expand the availability of CL in Maryland: (1) interdisciplinary CL training for attorneys and other professionals interested in practicing CL and (2) initiatives to ensure that CL is an option for low income individuals pursuing family law cases.

In 2011, the Department of Family Administration organized the country's first judicially sponsored CL training, which was attended by more than 100 Maryland attorneys. Since then, two other training sessions have been provided to attorneys and other professionals, and a fourth session is planned for June 2013. To date, approximately 300 attorneys and other professionals have been trained (C. Kratovil-Lavelle, personal communication, May 14, 2013). The training offered by the Department of Family Administration is consistent with the training standards promulgated by IACP. Participants attend at no cost, but they must agree to handle a minimum of two CL cases on a pro bono basis.

Also in 2011, the Department of Family Administration provided technical support for the creation of the nonprofit Collaborative Project of Maryland and, in 2012, began providing funding to that program and to another nonprofit, Mid-Shore Pro Bono, Inc. The Department funds one staff member at each organization to link pro bono CL professionals and low income families seeking CL services. Mid-Shore Pro Bono provides services in five counties on Maryland's Eastern Shore (Caroline, Dorchester, Kent, Queen Anne's, and Talbot), and the Collaborative Project of Maryland provides services in the rest of the state. One source of

referrals is the list of attendees at the Department's training sessions. To date, the two programs have placed CL attorneys and other CL professionals on approximately 100 cases, typically pairing a seasoned CL attorney with one who has been newly trained (C. Kratovil-Lavelle, personal communication, May 14, 2013).

The Department of Family Administration plans to expand the pro bono programs in fiscal year 2014 in response to a growing number of requests for CL. As part of this expansion, the programs will monitor and manage the pro bono commitments of the training attendees (C. Kratovil-Lavelle, personal communication, May 14, 2013).

2012 Collaborative Law Survey

To increase understanding of the practice of CL in Maryland, a voluntary and confidential online survey of legal professionals was conducted as part of the present study during June and July 2012. The survey was intended to reveal factors that facilitate or impede the expanding use of CL and to answer the following questions:

1. What are the economic and demographic characteristics of clients that utilize CL?
2. How willing are CL attorneys to take cases on a low- or pro-bono basis?
3. What is the cost of legal services in CL cases compared to traditional litigation?

The AOC Department of Family Administration sent invitations to participate in the survey electronically to 146 individuals identified through their attendance at CL training sessions in November 2011 and March 2012 and through national CL organizations. The IGSR study team compiled and analyzed the responses. Although a reminder was sent out and the deadline for completing the survey was extended, only 28 individuals (19.2%) responded to the survey,[13] including 25 who identified themselves as "Lawyers," thus meeting the criteria to complete the survey.

Respondent Practices

All 25 lawyers that responded had attended CL training in Maryland. Most had completed between nine and 24 hours of training. They were asked to indicate in which areas of law they actively practice, traditional litigation, mediation, and/or CL. Twenty of the respondents reported actively practicing traditional litigation and 17 reported actively practicing mediation, while only nine reported actively practicing CL.

The survey further distinguished between "active" and "current" practice of CL, under the assumption that there may be attorneys who have participated in training sessions and

[13] While the 19.2 percent response rate may seem disappointing, it is not an unusually low rate for a survey of this type. Note that the response rate to the Schwab (2004) survey was 19.8 percent.

advertise/offer CL services, but do not currently handle CL cases. The survey instrument restricted questions specific to the practice of CL to respondents answering affirmatively to the question "Do you currently practice collaborative law?" Of the nine respondents who reported any CL practice, eight respondents reported currently practicing CL. In general, the responses from these eight attorneys are similar to the findings of the studies conducted in other jurisdictions. Because of the small number of respondents, caution is warranted in drawing conclusions about the practice of CL in Maryland.

Attorneys who currently practice CL (CL attorneys) and attorneys who do not (non-CL attorneys) were similar with respect to gender and race, with each group having one male attorney and two attorneys identifying as Black/African American. The CL attorneys as a group were younger than the non-CL attorneys.. (See Table 2.) The median age of 45 among the 8 CL attorneys that responded to the survey is somewhat younger than the median age of 53 among the 12 non-CL attorneys that reported their age.

Table 2. Demographic Characteristics of Survey Respondents

Demographic Characteristics	Number of Attorneys Reporting Specified Characteristic	
	Non-CL Attorneys	CL Attorneys
Gender		
Female	11	7
Male	1	1
Total Number of Attorneys Reporting Gender	12	8
Race		
White/Caucasian	9	6
Black/African American	2	2
Total Number of Attorneys Reporting Race	11	8
Age		
25 to 30	0	2
31 to 40	3	1
41 to 50	2	2
51 to 60	5	4
61 or over	2	0
Total Number of Attorneys Reporting Age	12	8

As shown in Table 3, the CL attorneys that responded to the survey have, on average, less experience practicing law than do the responding attorneys that do not currently practice CL. In addition, as shown in Table 4, most of the CL attorneys responding to the survey are quite new to CL practice, with the majority practicing CL for less than one year.

Table 3. Years of Legal Practice Reported by Survey Respondents

Number of Years of Legal Practice	Number of Attorneys Reporting Specified Number of Years of Legal Practice	
	Non-CL Attorneys	CL Attorneys
1 to 5	5	3
6 to 10	2	1
11 to 15	2	1
16 to 20	2	2
More than 20	6	1
Total Number of Attorneys Responding	17	8

Table 4. Years of CL Practice Reported by Survey Respondents

Number of Years of CL Practice	Number of CL Attorneys Reporting Specified Number of Years of CL Practice
Less than 1	5
1 to 2	0
3 to 4	1
5 to 10	2
More than 10	0
Total Number of Attorneys Responding	8

Twelve of the 17 attorneys that do not currently practice CL and 7 of the 8 CL attorneys estimated the number of traditional litigation cases they handle in a typical year.[14] (See Table 5.)

[14] One of the responding CL attorneys does not practice traditional litigation and, therefore, did not provide information on traditional litigation cases or clients.

The distributions of traditional litigation cases are similar for the two groups, with one attorney in each group handling only one case per year and all others handling six or more.

Table 5. Estimated Number of Cases Handled by Survey Respondents in a Typical Year

Average Number of Cases Per Year	Number of Attorneys Reporting Specified Number of Traditional Litigation Cases		Number of CL Attorneys Reporting Specified Number of CL Cases
	Non-CL Attorneys	CL Attorneys	
1	1	1	5
2 to 3	0	0	2
4 to 5	0	0	1
6 to 10	3	1	0
11 to 15	3	0	0
15 or more	5	5	0
Total Number of Attorneys Responding	12	7	8

All eight CL attorneys provided estimates of the number of CL cases they handle in a typical year. Five CL attorneys, including four practicing CL for less than a year, reported having one CL case per year; the other CL attorney that reported handling one CL case per year has practiced CL for 5 to 10 years.

The wording of the survey questions does not permit a precise estimate of the total numbers of cases the CL attorneys have handled. Based on the years of CL practice and typical case loads they reported, they appear to have collectively handled between 40 and 60 CL cases.

CL attorneys reported the vast majority (98%) of CL cases involve family law as opposed to small claims, personal injury, or other types of cases known to use the collaborative process. Of those family law cases, respondents reported an average of 93 percent specifically involve divorce. Thus, divorce cases seem to predominate among CL cases handled by Maryland practitioners, comprising 91 percent of CL cases handled by this group of Maryland practitioners.[15]

[15] Divorce cases constituted 93 percent of the 98 percent of CL cases that involve family law (.93 x .98 = .91). In contrast, divorce cases constituted only 52 percent of the traditional litigation cases of the CL practitioners and 59 percent of the litigation cases of the non-CL attorneys responding to the survey.

Further, the responding CL attorneys reported that, on average, about two-thirds (67%) of collaborative divorce cases involve custody determinations. Six of the seven CL attorneys who responded to the Maryland survey agree that custody determinations in collaborative divorce cases differ from those in traditional litigation, primarily in the "attitudes of the parties" and that CL custody determinations result in parenting plans and schedules to which both parents have input.

Researchers were interested in the involvement and consultation of third party neutral experts in CL, such as mental health professionals and financial experts. Specifically, survey questions focused on (1) the extent to which CL attorneys consult such experts, (2) what factors prompt consultation, and (3) how their consultation affects the process of CL negotiations and the outcomes of CL cases. Unfortunately, the response rate for this series of questions was low; only four CL attorneys provided information. The CL attorneys that provided responses included one that had practiced CL for less than a year and three that had practiced CL for three or more years. They reported on average that 43 percent of their CL cases involved consultation with neutral experts. For the individual Maryland CL attorneys, the highest percentage of cases involving neutral experts was 91 percent, while the lowest was 5 percent. The variation in responses does not appear to be related to respondents' years of CL practice or the numbers of CL cases they have handled.

When asked to describe the factors that prompt consultation of experts, three of the Maryland CL attorneys described financial issues. The fourth respondent stated that "clients and attorneys feel it would be beneficial." Unequivocally, the CL attorneys that responded feel the involvement of neutral experts is beneficial and improves both the process and the outcome of CL cases. They report that the process is more efficient and the parties appreciate the sense of being involved in the decision-making process.

Only three CL attorneys provided estimates of the percentage of their CL cases that involve consultation of a mediator. One of these practitioners, who had practiced for less than one year, reported not having used a mediator. The two other respondents had practiced CL for three years or more. They reported using a mediator in 1 percent of cases and 10 percent of cases, respectively. One of these CL attorneys described using mediators in two cases in which the parties appeared to have reached an impasse over a particular issue. The other CL practitioner noted that involving a mediator can be a cost-effective approach for parties that need time to sort out and prioritize their concerns and issues.

Six of the eight CL attorneys in this survey reported the percentage of their CL cases that reached full settlement agreements. They reported that, on average, 97 percent of their CL cases reached full settlement agreements through the collaborative process. Only one CL practitioner reported having CL cases in which the parties reached partial settlement agreements through the collaborative process, while opting to resolve other issues through traditional litigation.

Legal Costs of Collaborative Law

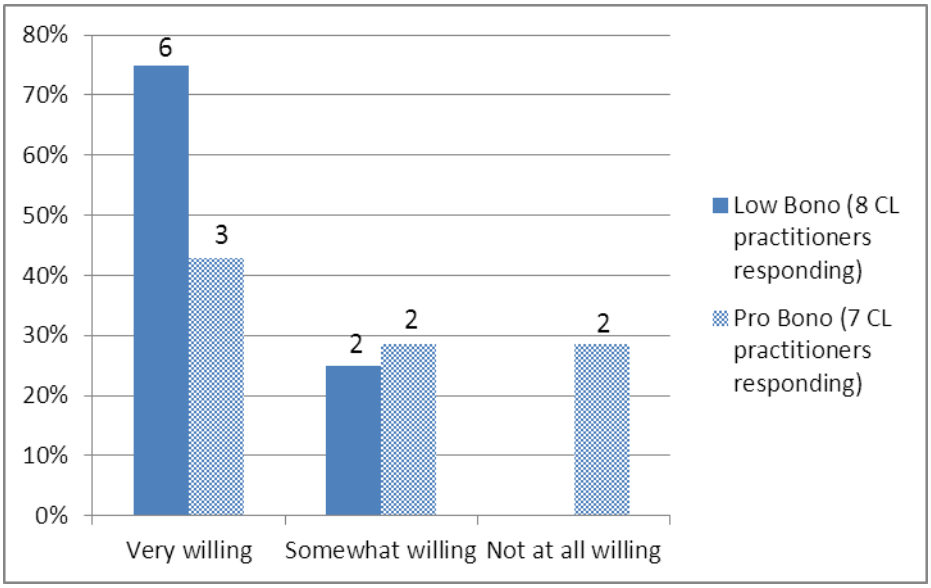
Seven of the CL attorneys reported on their time spent on CL cases, and six CL attorneys reported on time spent on their traditional cases. On average, the CL attorneys estimated spending fewer hours on CL cases (32 hours) than on traditional cases (51 hours) and about half as many months on CL cases (5.6 months) as on traditional cases (10.5 months). The CL attorneys reported that their CL cases involved an average of 4.13 four-way meetings.

Given that the CL attorneys reported that CL cases required less of their time than traditional litigation cases, it is not surprising that they also reported lower costs per client for CL cases. Four CL attorneys provided an estimated legal cost per client for a CL case; the average reported value was $8,900. Five CL attorneys provided an estimated legal cost per client for a traditional litigation case; the average reported value was $21,700.[16] It is possible that pro bono services, required as a condition of the Department of Family Administration's free training or provided voluntarily, may affect the costs of CL cases reported by these attorneys. Also, once again, the small number of respondents to the Maryland survey suggests exercising caution in generalizing these results.

CL attorneys were asked about their willingness to provide pro bono and low bono services. Respondents appear much more willing to provide low bono services for CL cases than pro bono services, with twice as many respondents (six) "very willing" to provide low bono services as pro bono services (see Figure 2). No one reported being "not at all willing" to provide low bono CL services, while two CL attorneys reported being "not at all willing" to provide pro bono CL services. As noted earlier, as a condition of attending the CL training provided by the Department of Family Administration at no charge, attendees must agree to provide a specified amount of pro bono CL services.

[16] The non-CL attorneys that responded to the survey reported spending slightly more time on traditional litigation cases (56 hours over 12.5 months) than did CL attorneys. The average cost to traditional litigation clients reported by the non-CL attorneys ($9,583) was substantially lower, however, than the average cost reported by CL attorneys and much closer to the costs reported by CL attorneys for CL cases.

Figure 2. Willingness to Provide Low and Pro Bono Legal Services



Client Characteristics

Based on estimates provided by respondents, Maryland CL clientele are less diverse than traditional litigation clients with regard to race/ethnicity. As shown in Table 6, the racial/ethnic distribution of traditional litigation clients is similar for 11 responding attorneys that do not currently practice CL and 7 responding CL attorneys, with White/Caucasian clients representing less than half of their respective clients. In contrast, the eight CL attorneys reported that a large majority of CL clients are White/Caucasian. On average, Whites made up 84 percent of CL clients, but some attorneys reported that Whites comprise 100 percent of their CL clients. Latinos/Hispanics are the only ethnic group averaging similar percentages of clients for both CL and traditional litigation. The difference in the racial/ethnic composition of the CL versus traditional litigation clients may be associated with the different types of cases handled by each method, with CL cases predominantly involving divorces while traditional litigation includes other kinds of family law and non-family law cases.

Table 6: Client Race/Ethnicity by Practice Type Reported by Survey Respondents

Race/Ethnicity	Average Reported Percentage of Clients in Specified Racial/Ethnic Category		
	Traditional Litigation Clients		Collaborative Law Clients
	Non-CL Attorneys	CL Attorneys	
White/Caucasian	45%	44%	84%
Black/African-American	32%	32%	2%
Latino/Hispanic	14%	16%	13%
Asian/Pacific Islander	6%	4%	0%
Other	3%	4%	1%
Total	100%	100%	100%
Total Number of Attorneys Responding	11	7	8

Respondents were similarly asked to provide estimates of the distribution of clients' income levels. The median of the client incomes reported by non-CL attorneys was $49,000, while the median of the client incomes reported by CL attorneys was roughly $55,000 for both their traditional litigation clients and their CL clients.

Table 7 shows the average distributions of client incomes reported by the non-CL attorneys and CL attorneys. Compared to the clients of non-CL attorneys, a greater percentage of the CL attorneys' clients (both their traditional clients and CL clients) had incomes of $30,000 or below or above $70,000. Clients of non-CL attorneys were much more likely to have incomes between $30,001 and $45,000 than were clients of CL attorneys.

The largest groups of clients of the CL attorneys have incomes of $30,000 or below; these groups comprise 30 percent of traditional litigants and 38 percent of CL clients. About 40 percent of both traditional and CL clients of CL attorneys have incomes of $45,000 or below, and 22 percent of each group have incomes above $100,000.

Table 7: Client Income Reported by Survey Respondents

Income Range	Average Reported Percentage of Clients with Estimated Income in Specified Range		
	Traditional Litigation Clients		Collaborative Law Clients
	Non-CL Attorneys	CL Attorneys	
$30,000 or below	25%	30%	38%
$30,001 - $45,000	21%	10%	4%
$45,001 - $70,000	25%	24%	20%
$70,001 - $100,000	13%	14%	16%
$100,001 - $150,000	11%	12%	18%
$150,001 - $250,000	4%	8%	4%
$250,001 or more	< 1%	2%	0%
Total	100%	100%	100%
Total Number of Attorneys Responding	11	7	8

Benefits of Collaborative Law

Both CL attorneys and non-CL attorneys were posed questions about the benefits of CL, and several common themes were found in the 11 responses. Attorneys indicated that CL often leads to more positive long-term client outcomes. The terms “lasting,” “sustainable,” and “durable” were used to describe settlement agreements. Respondents also suggested that the “non-litigious manner” of the process “encourages conciliation instead of conflict.” Additionally, they responded that both the collaborative nature of the process and the involvement of neutral experts provide clients the opportunity to learn skills and techniques for avoiding and resolving conflicts that the parties can use in future deliberations. Other comments by respondents on the benefits of CL included: simplified practice, easier to organize calendar; people happier paying; process less stressful to attorneys than going to court; unlike mediation, keeps lawyers involved; and provides a person dedicated to a child-focused position.

Limitations of the Practice of Collaborative Law

CL and non-CL attorneys were also asked questions about the limitations of practicing CL. Of the 16 responses, 7 mentioned the high cost or perceived high cost to clients. Another

response, which cited "[l]imited access due to socio-economic factors," seemed to reflect the same theme. Four respondents mentioned a lack of awareness of CL among clients and/or attorneys. Three respondents mentioned the location of their practices, with two of these noting specifically that it is difficult finding collaborative professionals in their area.

Other limitations cited were the need for attorneys to obtain ongoing training to get better at CL; the disqualification requirement and the need for attorneys to relinquish the ability to go to court on behalf of a client; the limited ability to advertise collaborative services; and the difficulty of predicting which cases will not settle through CL.

The response of one CL attorney, while perhaps reflecting frustration with aborted CL processes, also counters concerns raised in interviews that an unsuccessful CL process may lead to a more contentious litigation process:

> "In the very few cases that did not settle, I would not have foreseen that result when I first met with the client. However, in the four cases that did not settle over the past seven years of my practice, three of them settled very soon after the end of the process. I believe this is because all of the information and work necessary to effectuate a settlement was in place, and set forth in a concise comprehensive manner through the schedules created by the experts and the minutes taken in meetings. It was therefore easy for the next attorney to see exactly what needed to be done. In those cases, one or the other client just needed a 'second opinion' in effect. In my current cases, I encourage clients who are considering ending the process to get that second opinion BEFORE they end the process, so they know whether it makes sense to do so."

Expanding Collaborative Law in Maryland

Both CL practitioners and non-CL attorneys were asked what would help CL to grow in Maryland. Consistent with their comments regarding limitations, survey respondents feel that expanding the use of CL in Maryland will require addressing two overarching factors: lack of public and professional awareness (mentioned in 10 of 20 responses), and costs that are prohibitively high for many clients (mentioned in 7 of 20 responses). One respondent stated, "Very few people understand the concept, and many attorneys have a negative view of the process." Two respondents commented on the role of the court, in particular, in providing information about CL. One of these respondents stated, "Information from the court lends credibility to practitioners and the process." The responses that addressed cost suggested providing funding assistance to clients who cannot afford CL, providing pro bono or low bono services, and eliminating the disqualification requirement.

Four respondents said that increasing the availability of collaborative training would help to grow CL; one respondent mentioned the need for training on the Eastern Shore, in particular. Other comments addressed the need to standardize the rules, pass UCLA, and expand the pool of collaborative professionals in some geographic areas. One respondent had a contrary view,

stating “I don’t think growing collaborative law should be a goal. It is not appropriate for the vast majority of the family law population.”

Familiarity with the Uniform Collaborative Law Act

Of the 20 attorneys responding to the question about familiarity with UCLA, 80 percent, including seven of eight CL attorneys and nine of 12 non-CL attorneys, are familiar with UCLA. All six of the CL attorneys and six of the nine non-CL attorneys who commented on the act expressed support for its enactment, citing the need to standardize the practice of CL, provide clarity and consistency across states, and establish legitimacy within the legal profession and among potential clients. Two non-CL respondents were unsure about UCLA. One stated:

> “I have very mixed feelings about it. I think attorneys can help clients resolve more matters by using many of the collaborative tools, but I think it is a deterrent to many that you can't represent the client if the collaborative process fails. Also, losing the client may cause attorneys to become too invested and force clients into agreements they are unhappy with. I also think it is difficult to trust other attorneys in the collaborative process when you have seen how they operate outside of the process. It is probably a good thing to have guidelines in place, but I disagree with some of the guidelines.”

The other unsure respondent suggested the act is strongly opposed by the Bar's litigation section, making enactment “highly unlikely at the present time.” Only one respondent stated outright that s/he opposed adoption of UCLA; “I do not think legislation should be enacted to direct the practice of law. If anything, court rule is preferable. I would oppose any such legislation.”

The small number of respondents to the survey limits the conclusions that can be drawn about the use of CL in Maryland. Although many attorneys have taken advantage of the training offered by the Department of Family Administration, the number who have actually put their training to practice and/or were willing to complete the survey indicates that it is still a very new area of practice and not “ripe” enough for a true program evaluation. With some refinement, the online surveys could be used to continue collecting information on a routine basis to add to the findings and track changes over time.

Summary and Conclusions

The Collaborative Law Movement

Collaborative law (CL) is an alternative dispute resolution process in which each party hires an attorney, and the parties and their respective attorneys work together outside the courts to negotiate a mutually acceptable agreement to resolve a dispute that would normally be resolved through litigation. A key feature of CL is that all parties must agree that, if an agreement is not reached, the participating attorneys will not represent the parties in court. Another key feature is mutual sharing of information. Parties using CL often, but not always, engage neutral experts, such as financial advisors and mental health professionals, to assist in the process.

During the past decade, the practice of CL has gained traction in the United States, almost exclusively within family law. The Uniform Law Commission has developed a model statute, which has been adopted in six states and the District of Columbia. At least two other states have adopted their own CL statutes. A number of national and state level organizations have emerged to promote CL, and these groups have adopted principles and standards of practice. Nearly all the state ethics opinions concerning CL, including the only opinion issued in Maryland, as well as an American Bar Association (ABA) opinion have supported the practice of CL.

Advantages of CL cited by proponents include a more positive legal experience for the parties to the dispute, reduced costs compared to traditional litigation, more creative solutions, and a foundation for better communication among the parties going forward. A commonly cited drawback is that CL is not affordable for low and moderate income parties. Also, the costs of resolving the dispute increase substantially if the CL process fails to produce an agreement and the parties must pursue litigation with new attorneys.

A successful CL process reduces the workload of the courts and avoids scheduling issues that arise when the traditional legal process results in a last minute settlement and cancellation of a trial. Proponents contend that CL enables attorneys to gain skills in mediation and consensus building and is more satisfying than traditional litigation. Critics of CL within the Bar raise concerns that the role played by attorneys in the process is inconsistent with their ethical responsibilities.[17] [the footnote for 17 indicates "seven of eight states" and should indicate "twelve of thirteen" states…] Some attorneys oppose the imposition of standards through

[17] As noted above, this contention has been rejected by the ABA and seven of eight state ethics panels that have issued opinions on the matter.

legislation such as the Uniform Collaborative Law Act (UCLA). The potential for CL to enable clients to skirt tax laws has also been raised. Proponents argue that opposition to CL by litigators is explained merely by their desire to protect their income.

Past Research on Collaborative Law

The one past study containing demographic information on CL attorneys (Schwab, 2004) described the average CL practitioner as a 60-year old female family law attorney with 20 years of practice experience. As reported by Wray (2011a), a survey by the International Association of Collaborative Professionals (IACP) revealed that nearly all CL cases involve divorces, and these cases typically represent only a portion of attorneys' caseloads—often only one to two cases per year. CL attorneys are motivated to practice law in a manner that better fits their values and to provide better service to clients (Macfarlane, 2005).

Previous studies (Macfarlane, 2005; Wray, 2011a) found that non-attorney professionals are involved in a little more than half of CL cases, either as part of a team convened at the start of the process or through referrals during the process. The CL process is successful in attaining an agreement in roughly 90 percent of cases (Hoffman, 2008; Wray, 2011a, 2011b).

The outcomes of CL cases are reportedly similar to the outcomes of traditional cases, although additional components, such as creative plans for co-parenting, may be included in agreements coming out of CL (Macfarlane, 2005).

According to previous research, CL attorneys spend roughly 30 hours on CL cases over about six months, with average legal charges somewhere between $8,000 and $20,000 per client (Schwab, 2004; Hoffman, 2008; Wray, 2011a). The survey by IACP (Wray, 2011a), found that charges for other professionals add about $3,300 per case.

According to past studies, typical CL clients are White (Schwab, 2004; Keet et al., 2008), middle-aged (Schwab, 2004; Wray, 2011a) and have household incomes that are above average and higher than the average income of traditional litigants (Schwab, 2004; Hoffman, 2008). CL clients are motivated by a desire to reduce costs, obtain speedier results, and minimize the impact on children (Schwab, 2004; Macfarlane, 2005). They are also attracted by a process that they expect to be less confrontational and adversarial, more respectful, provide them with more control over the outcome, and result in a better outcome (IACP, n.d.-g). Participants are generally satisfied with the CL process (Schwab, 2004; Wray, 2011c). Some CL clients, however, complain that CL attorneys are more committed to the CL process than to their clients' interests (Macfarlane, 2005).

Collaborative Law in Maryland

During 2012, there were 118 attorneys and 68 other professionals associated with CL practice groups in Maryland. Practitioners estimate that several hundred additional Maryland attorneys have been trained in CL. For this study, information on CL practice in Maryland was

obtained from interviews with six CL attorneys, survey responses of FSSC in the 24 circuit courts, and survey responses of 25 Maryland attorneys who had attended CL training, including 8 attorneys currently practicing CL.

The survey of Maryland attorneys did not yield an exact number of CL cases handled, but it appears from their responses that the eight CL attorneys collectively have handled between 40 and 60 CL cases during the time they have practiced CL. As in the Schwab (2004) study, the responding CL attorneys were mostly female. They were substantially younger, however, than the attorneys surveyed by Schwab (2004) (average age of 45 among Maryland respondents versus 60 among Schwab respondents), and most were quite new to CL practice. Most CL attorneys responding to the present survey reported handling only one CL case per year. The small numbers of CL cases handled by these Maryland practitioners are similar to the case counts of respondents in the national research conducted by IACP (Wray, 2011a).

Also consistent with what has been reported elsewhere, CL attorneys surveyed in Maryland reported that nearly all of their CL cases involve family law. Ninety-one percent of their CL cases involve divorce, slightly lower than the 97 percent of CL cases involving divorce reported nationally (Wray, 2011a). The responding CL attorneys reported that, on average, about two-thirds (67%) of collaborative divorce cases involve custody determinations, a similar result to the 62 percent of cases with children subject to the legal process reported in IACP's national study (Wray, 2011a).

For the attorneys surveyed in Maryland, 43 percent of cases involve consultation with neutral experts, compared to 56 percent found by Macfarlane (2005) and 57 percent found by IACP (Wray, 2011a). The reported 97 percent of CL cases that reach settlement in Maryland is higher than the rates reported in other studies, which are closer to 90 percent.

The average of 32 hours of attorney time per CL case, 4.13 four-way meetings, and six-month duration of the process reported by the Maryland attorneys are similar to the 28.7 hours and 4.3 four-way meetings per case over an average of 6.3 months reported by attorneys and clients in the United States and Canada surveyed by Schwab (2004). The results are also similar to those reported by IACP attorneys: in cases in which four-way meetings occurred, there was an average of four such meetings; nearly half (44%) of cases were completed within six months, and 80 percent of cases were completed within one year (Wray, 2011a).

Table 8 summarizes the data on the cost of CL cases from past studies and the 2012 survey of Maryland attorneys. The average $8,900 in legal costs per CL client reported by the Maryland attorneys is nearly identical to the $8,777 average legal costs per CL client reported by Schwab (2004) and similar to the $20,884 average legal costs per case reported to IACP (Wray, 2011a). The Maryland legal costs per CL client are less than half the $19,723 reported by

Hoffman (2008), however.[18]

Table 8. Estimated Costs of CL Cases

Estimated Costs of CL Cases	Study Reporting Specified Costs			
	Schwab, 2004	Hoffman, 2008	IACP (Wray, 2011a)	2012 Maryland survey
Legal costs per client	$8,777	$19,723		$8,900
Legal charges per case			$20,884	
Total charges per case			$24,185	

No information was collected for the present study on the costs of non-legal collaborative professionals. If the charges reported to IACP (average charges per case of $3,301 for non-legal collaborative professionals[19]) are divided in half and added to the $8,900 legal cost per client estimated by the Maryland CL attorneys, the average total cost per CL client would be $10,550, which is still much less than the average legal cost per client of traditional litigation estimated by the CL attorneys ($21,600), but about 10 percent more than the average legal cost per client of traditional litigation estimated by the non-CL attorneys ($9,583).

The CL attorneys surveyed expressed strong willingness to provide low bono CL services. They are somewhat less willing to provide pro bono CL services.

As reported by the CL attorneys responding to the present survey, CL clients were more likely to be White than were their traditional litigation clients and very unlikely to be Black. The racial/ethnic composition of CL clients reported by the Maryland CL attorneys is actually more diverse than that seen in other studies. No non-White clients were present in the two past studies (Schwab, 2004; Keet et al., 2008) in which client race was reported.

In contrast to the findings of other studies the Maryland CL attorneys reported very little difference between the income levels of their CL and traditional litigation clients; each group had a median income of about $55,000. Table 9 shows the client income information reported in national IACP studies and the information obtained from the 2012 Maryland survey. At the

[18] The $21,700 average legal cost per client for traditional litigation estimated by Maryland CL practitioners is also much less than the $77,746 average reported for traditional litigation by Hoffman (2008) and may be reflective of the lower income levels of the Maryland clients (and perhaps lower billable rates of their attorneys) compared to the client group (and corresponding attorneys) studied by Hoffman. It is also possible that the lower average costs reported by the Maryland CL attorneys are due to their providing pro bono or low bono services in some cases.

[19] The estimated cost of non-legal collaborative professionals is obtained by subtracting legal charges per case from total charges per case.

lower end of the income spectrum, it is difficult to compare the Maryland findings to the past IACP studies because the ranges reported in the IACP studies differ from those used in the Maryland survey. It appears though that a larger percentage of the Maryland CL clients were at the low end of the income spectrum compared to the CL clients covered by the national IACP surveys. A substantially smaller percentage of the Maryland clients were at the high end of the income spectrum compared to the national IACP results.

Table 9. Distribution of CL Clients' Incomes

	Percentage of Clients with Income in Specified Range		
Client Income Range	As Reported by IACP Professionals (Wray, 2011a)	As Reported by IACP clients (IACP, n.d.-g)	As Reported in 2012 Maryland Survey
Less than $30,000			38%
Less than $35,000		18%	
Less than $45,000			42%
Less than $50,000	39%		
$100,000 or more	33%	34%	22%

The differences in survey results between IACP and Maryland may mean that Maryland CL attorneys are serving more low income clients than are attorneys elsewhere. Another possible explanation is that more wives than husbands were represented among the clients of attorneys responding to the Maryland survey. As commonly observed in national economic studies and corroborated for CL participants by the IACP survey, wives' incomes are much more likely to be low and much less likely to be high than are husbands' incomes.

The primary barriers to expansion of CL identified by Maryland survey respondents are a lack of awareness and understanding of the CL process by the public and other attorneys and the high cost of CL. A shortage of professionals participating on collaborative teams was also mentioned.

Recommendations

Efforts to increase awareness and understanding of CL could follow a two-pronged approach of educating the public and educating attorneys, with educating attorneys as the key. Only when CL is presented routinely by attorneys as one of the options available to disputing parties are the numbers of CL clients likely to increase substantially, and only when larger numbers of attorneys practice CL are they likely to present it routinely as an option. The

increasing use of CL and accompanying demand for collaborative professionals to work on CL teams might then spur expansion of their ranks.

The task of educating attorneys about CL has several challenges. The fact that CL is not a formal part of the Maryland justice system limits its visibility. Yet, to become part of the justice system, either through court rules or legislation, requires a level of acceptance within the Bar. It appears that awareness of the CL process does not necessarily lead to acceptance as evidenced, perhaps, by the opposition to UCLA within the ABA and the Maryland General Assembly.

Training offered by the Department of Family Administration in the Administrative Office of the Courts (AOC) is an important means of broadening awareness of CL among attorneys and increasing the ranks of CL practitioners, including attorneys and other professionals. This type of training is likely to reach attorneys who already believe that CL is a valuable approach. A strategy for increasing awareness and understanding of CL among attorneys that are opposed to or indifferent to CL is also needed. To the extent that the opposition is based on disagreement regarding the role and responsibilities of attorneys, education efforts must address these concerns. To the extent that the opposition stems from a less noble desire to protect an income stream, as argued by some CL supporters, the resistance may be difficult to overcome.

> Recommendation: AOC should work with the Maryland Bar Association and professional organizations for mental health and financial professionals to disseminate information about CL and expand CL training and networking opportunities among collaborative professionals.

Addressing concerns with the cost of CL may also involve increasing awareness and understanding of the CL process. The findings of this and other studies do not support the notion that CL is much more costly than traditional litigation, and there is some evidence that traditional litigation is much more costly than successful CL. The problem arises if CL is unsuccessful and the costs that have been incurred for CL become merely a surcharge on litigation costs that would have been incurred anyway. This problem does not occur frequently, however. Studies indicate that an agreement is reached in about 90 percent of CL cases.[20]

Based on research to date on the costs and success rate of CL, it appears that CL is an option with a high probability of substantially lowering the cost of resolving a dispute and a low probability of moderately increasing the cost of resolving a dispute. It would seem, then, that only the most risk averse individuals would forgo CL for cost reasons. Estimates of the legal

[20] It is not possible to determine from existing research whether the high success rate occurs because the cases that choose to go to CL are the most amenable to settlement. Also, the CL team may force participants toward an agreement that may be disadvantageous to one party. As the use of CL increases, it will be interesting to monitor the rate at which agreements are achieved.

costs of CL and traditional litigation from a larger sample of Maryland attorneys as well as information on the costs of the non-legal services provided in Maryland CL cases are needed to determine with confidence whether the full costs of CL are substantially less than the costs of litigation.

Given that CL legal costs appear at worst to be comparable to the costs of litigation, describing CL as unaffordable for low and moderate income clients is similar to saying that legal services are unaffordable for low and moderate income clients. Rather than simply labeling CL as exclusionary, a more productive response is to find ways to enable low and moderate income clients to access CL services. The fact that most of the CL attorneys responding to the present survey expressed a willingness to provide low bono CL services and some are willing to provide pro bono services bodes well for such efforts.

> Recommendation: The Department of Family Administration should continue requiring attendees at its free training to commit to providing a specified amount of pro bono collaborative services. Methods such as grants to support low bono services should also be explored.

Efforts to increase awareness and understanding of CL among the public, the Bar, and legislators would be aided by additional information about the practice of CL in Maryland. One way to accomplish this is to survey CL practitioners on an ongoing basis. The survey used for the present study could be modified to incorporate questions for non-attorney professionals participating in the CL process. If training participants were alerted to the survey and encouraged to participate, a higher rate of participation might be achieved. It would also be worthwhile to conduct a follow up survey well after those new to CL have attended training, when they might have obtained more experience handling CL cases. Such ongoing program evaluation efforts are imperative in order to document successes, identify and troubleshoot issues and training needs that may impede the use of the program, and determine appropriate monetary levels of support for low-bono practitioners.

> Recommendation: AOC should continue surveying Maryland CL practitioners, including both attorneys and other professionals to provide additional information that can be used in educating the public, the Bar, and legislators about CL. The existing survey should be modified to obtain information, including the costs of their CL services, from mental health and financial professionals as well as attorneys. CL professionals should be surveyed routinely following their attendance at CL training as well as after they have established CL practices. AOC may also want to consider surveying CL clients to obtain their perspective on the CL process in Maryland.

References

American Bar Association (2009). *Summary of ethics rules governing collaborative practice*. Retrieved November 12, 2012, from http://www.collaborativelaw.us/articles/Ethics_Opinion_ABA.pdf.

American Bar Association (2007). *Formal Opinion 07-477: Ethical considerations in collaborative law practice*. Retrieved November 12, 2012, from http://www.collaborativelaw.us/articles/Ethics_Opinion_ABA.pdf.

Bryan, P. (1999). Collaborative divorce: Meaningful reform or another quick fix? *Psychology, Public Policy & Law 5*(4), 1001-1017.

Cochran, R. (2010). Legal ethics and collaborative practice ethics. *The Collaborative Review* 11 (3) 16-31. Retrieved November 8, 2012, from http://www.collaborativelaw.us/articles.html.

Crary, D. (2007, December 18). *Keen interest in gentler ways to divorce*. The Associated Press Retrieved April 21, 2013, from https://www.collaborativepractice.com/lib/articles/Keen%20Interest%20in%20Gentler%20Ways%20to%20Divorce.pdf

Elster, J. (1987). Solomonic judgments: Against the best interest of the child. *The University of Chicago Law Review, 54*(1), 1-45.

Global Collaborative Law Council (2004). *Protocols of practice for collaborative lawyers*. Retrieved November 10, 2012, from http://www.collaborativelaw.us/articles/GCLC_Protocols.pdf.

Global Collaborative Law Council (no date-a). *State collaborative law statutes and court rules*. Retrieved November 12, 2012, from http://www.collaborativelaw.us/resources.html

Global Collaborative Law Council (no date-b). *Overview of collaborative law; collaborative practice ethics; uniform collaborative law act; collaborative law documents; and business and professional interests in collaborative law*. Retrieved November 12, 2012, from http://www.collaborativelaw.us/articles.html

Global Collaborative Law Council (no date-c). *Ethics opinions on collaborative law*. Retrieved November 8, 2012, from http://www.collaborativelaw.us/resources.html.

Hoffman, D. A. (2008). Colliding worlds of dispute resolution: Towards a unified field theory of ADR. *Journal of Dispute Resolution 11*(1), 11-44

International Academy of Collaborative Professionals (no date-a). *Civil collaborative practice*. Retrieved November 21, 2012, from http://www.collaborativepractice.com/_t.asp?M=2&T=Civil

International Academy of Collaborative Professionals (no date-b). *IACP history*. Retrieved November 8, 2012, from http://www.collaborativepractice.com/_t.asp?M=3&MS=3&T=History.

International Academy of Collaborative Professionals (no date-c). *IACP standards, ethics, and principles*. Retrieved November 18, 2012, from http://www.collaborativepractice.com/_t.asp?M=8&MS=5&T=Ethics.

International Academy of Collaborative Professionals (no date-d). *IACP minimum standards for collaborative trainers*. Retrieved November 18, 2012, from http://www.collaborativepractice.com/_t.asp?M=8&MS=5&T=Ethics.

International Academy of Collaborative Professionals (no date-e). *IACP ethical standards for collaborative practitioners*. Retrieved November 18, 2012, from http://www.collaborativepractice.com/_t.asp?M=8&MS=5&T=Ethics.

International Academy of Collaborative Professionals (no date-f). *Collaborative practice groups*. Retrieved November 8, 2012, from http://www.collaborativepractice.com/jazz_t.asp?M=7&T=PracticeGroups.

International Academy of Collaborative Professionals (no date-g). *FAQ with Answers Based on 98 Client Experience Surveys Completed for the International Academy of Collaborative Professionals (IACP) Research Project As of July 6, 2010*. Retrieved April 21, 2013, from http://www.collaborativepractice.com/lib/PDFs/FAQ-IACPClientExperienceSurveythrough7-6-10.pdf

International Academy of Collaborative Professionals (2012). *IACP minimum standards for collaborative practitioners*. Retrieved November 18, 2012, from http://www.collaborativepractice.com/_t.asp?M=8&MS=5&T=Ethics.

International Academy of Collaborative Professionals (2005). *IACP principles of collaborative practice*. Retrieved November 18, 2012, from http://www.collaborativepractice.com/_t.asp?M=8&MS=5&T=Ethics.

International Academy of Collaborative Professionals (2004). *IACP minimum standards for a collaborative basic training*. Retrieved November 18, 2012, from http://www.collaborativepractice.com/_t.asp?M=8&MS=5&T=Ethics.

Jacob, H. (1988) *Silent revolution: The transformation of divorce law in the United States*. University of Chicago Press, Chicago.

Keet, M., Wiegers, W., & Morrison, M. (2008). Client engagement inside collaborative law. *Canadian Journal of Family Law 24*(2), 145-204.

Lande, J. (2012). The revolution in family law dispute resolution, *Journal of the American Academy of Matrimonial Lawyers, 24*(2), 411-449.

Lande, J. (2011). An empirical analysis of collaborative practice. *Family Court Review, 49*(2), 257-281. (Note that this article is available from http://ssrn.com/abstract=1806633, but the page numbers differ from the published version.)

Lande, J. (2003). Possibilities for collaborative law: Ethics and practice of lawyer disqualification and process control in a new model of lawyering. *Ohio St. Law Journal, 64*. 1315-1384.

Macfarlane, J. (2005). *The emerging phenomenon of Collaborative Family Law (CFL): A qualitative study of CFL cases*. Retrieved November 18, 2012, from http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/rep-rap/2005/2005_1/pdf/2005_1.pdf

Maryland Collaborative Practice Council (2009). *About MCPC*. Retrieved November 8, 2012, from http://www.marylandcollaborativepractice.com/about_mcpc.php.

Maryland General Assembly (2012). *Bill information: 2012 regular session*. Retrieved November 10, 2012, from http://mlis.state.md.us/mgaweb/billinfo.aspx?2012rs.

Maryland State Bar Association (2004). *MSBA ethics docket 2004-23*. Retrieved November 8, 2012, from http://apps.americanbar.org/dch/committee.cfm?com=DR035000.

Mnookin, R.H. & Kornhauser, L. (1978). Bargaining in the shadow of the law: The case of divorce. *Yale Law Journal, 88*. 950-997.

Mosten, F. S. (2008). Collaborative law practice: An unbundled approach to informed client decision making. *Journal of Dispute Resolution, 2008*(1), 163-194.

Peppet, S.R. (2008). The ethics of collaborative law. *Journal of Dispute Resolution, 2008*(1), 131-162.

Pruett, M. K., Insabella, G. M. and Gustafson, K. (2005). The collaborative divorce project: A court-based intervention for separating parents with young children. *Family Court Review*, 43 (1), 38–51.

Roth, A. (1977). Tender years presumption in child custody disputes. *Journal of Family Law, 423* (1976-1977), 423-462.

Schepard, A.I. (2004). *Children, courts, and custody: Interdisciplinary models for divorcing families*. New York: Cambridge University Press.

Scholar, T. (1993). Collaborative law: A method for the madness. *Memphis State University Law Review, 23*(3), 667-686.

Schwab, William H. (2004) Collaborative lawyering: A closer look at an emerging practice. *Pepperdine Dispute Resolution Law Journal, 4*(3) Article 4. Retrieved from http://digitalcommons.pepperdine.edu/drlj/vol4/iss3/4

Shields, R.W., Ryan, J. P., & Smith, V. L. (2003). *Collaborative family law: Another way to resolve family disputes*. Toronto, Canada: Carswell.

Tesler, P. H. (2008). Collaborative family law, the new lawyer, and deep resolution of divorce-related conflicts. *Journal of Dispute Resolution, 2008*(1), 83-130.

Uniform Law Commission (2011). *Updated Executive Summary: Uniform Collaborative Law Rules and Uniform Collaborative Law Act*. Retrieved November 10, 2012, from http://apps.americanbar.org/dch/committee.cfm?com=DR035000.

Uniform Law Commission (no date-a). *Committees: Collaborative Law Act*. Retrieved November 7, 2012, from http://www.uniformlaws.org/Committee.aspx?title=Collaborative Law Act

Uniform Law Commission (no date-b). *Acts: Collaborative Law Act*. Retrieved April 18, 2013, from http://www.uniformlaws.org/Act.aspx?title=Collaborative Law Act

Webb, S. G. & Ousky, R. D. (2006). *The collaborative way to divorce*. New York, NY: Plume.

Wiegers, W. & Keet, M. (2008). Collaborative Family Law and Gender Inequalities: Balancing Risks and Opportunities. *Osgoode Hall Law Journal, 46,* 733-772.

Wray, L.K. (2011a).*The International Academy of Collaborative Professionals Research Regarding Collaborative Practice – Basic Findings*. Retrieved April 21, 2013, from http://www.collaborativepractice.com/lib/PDFs/2011-08-26-CollaborativePracticeReport-shortversion.pdf

Wray, L.K. (2011b).*What Clients Say About Their Experience in the Collaborative Process*. Retrieved April 21, 2013, from http://www.collaborativepractice.com/lib/PDFs/ClientExperience-Process2011-08-26shortversion.pdf

Wray, L.K. (2011c).*What Clients Say About Their Satisfaction with Collaborative Professionals*. Retrieved April 21, 2013, from

http://www.collaborativepractice.com/lib/PDFs/ClientSatisfactionSurveyarticle-professionals2011-08-26.pdf

Zahorsky, R.M. (2011). *ABA Rejects Proposed Measure for Collaborative Law Guidelines*. Retrieved November 10, 2012, from http://www.abajournal.com/news/article/the_aba_house_of_delegates_rejected_resolution_110b/

Appendix: Survey of Collaborative Law Practitioners

Q1 What is your current profession?

- ❍ Lawyer
- ❍ Social Worker
- ❍ Psychologist
- ❍ Financial Specialist or Accountant
- ❍ Judge
- ❍ Other, please specify: _____

If Lawyer Is Not Selected, Then Skip To End of Survey

Q2 How many years have you been in active practice as a lawyer?

- ❍ 1-5 years
- ❍ 6-10 years
- ❍ 11-15 years
- ❍ 16-20 years
- ❍ over 20 years

Q3 How long have you served with your current firm?

- ❍ 1-5 years
- ❍ 6-10 years
- ❍ 11-15 years
- ❍ 16-20 years
- ❍ over 20 years

Q4 Have you attended training in collaborative law?

- ❍ Yes
- ❍ No

If No Is Selected, Then Skip To End of Survey

Q5 How many hours of collaborative law training have you completed?

- ❍ 4-8 hours
- ❍ 9-24 hours
- ❍ 25 or more hours

Q49 Where did the training take place?

- ❍ Maryland
- ❍ Virginia
- ❍ District of Columbia
- ❍ Other, please specify: _____

Q6 Do you currently practice collaborative law?

- ❍ Yes
- ❍ No

If No Is Selected, Then Skip To Please select all divorce law options...

Q7 How many years have you been practicing collaborative law?

- ❍ Less than 1 year
- ❍ 1-2 years
- ❍ 3-4 years
- ❍ 5-10 years
- ❍ More than 10 years

Q8 Please select all areas in which you actively practice.

- ❑ Traditional Litigation
- ❑ Mediation
- ❑ Collaborative Law

Answer If Do you currently practice collaborative law? Yes Is Selected

Q9 Please estimate the average number of collaborative law cases you have in a typical year.

- ❍ 1 case
- ❍ 2-3 cases
- ❍ 4-5 cases
- ❍ 6-10 cases
- ❍ 11-15 cases
- ❍ 15 or more cases

Answer If Please select all areas in which you actively practice. Traditional Litigation Is Selected

Q10 Please estimate the average number of traditional litigation cases you have in a typical year.

- ❍ 0-5 cases
- ❍ 6-10 cases
- ❍ 11-15 cases
- ❍ 15 or more cases

Answer If Do you currently practice collaborative law? Yes Is Selected

Q11 Approximately what percentage of your collaborative practice involves family law and divorce cases as opposed to small claims, personal injury, or other types of cases?

_____ % of collaborative practice involving family law and divorce

Answer If What percentage of your collaborative practice involves f... % of collaborative practice involving family law and divorce Is Displayed

Q50 Of those collaborative family law and divorce cases, approximately what percentage specifically involves divorce?

_____ % of collaborative practice involving divorce

Answer If Please select all areas in which you actively practice. Traditional Litigation Is Selected

Q12 Approximately what percentage of your traditional litigation cases seek to settle divorce as opposed to small claims, personal injury, or other types of cases?

_____ % of traditional litigation cases that address divorce

Answer If Do you currently practice collaborative law? Yes Is Selected

Q13 A defining characteristic of Collaborative Law is that parties are free to abandon the collaborative process in favor of traditional litigation. In approximately what percentage of your collaborative cases have the parties reached full settlement agreements through the collaborative process as opposed to opting for traditional litigation?

_____ % of collaborative cases resulting in settlement agreements

Answer If A defining characteristic of Collaborative Law is that ... % of collaborative cases resulting in settlement agreements Is Displayed

Q53 Similarly, have you had collaborative cases in which the parties reached partial agreements through the collaborative process while opting for traditional litigation to resolve other issues of dispute?

- ❍ Yes
- ❍ No

Answer If Thinking similarly, have you had collaborative cases in w... Yes Is Selected

Q54 In approximately what percentage of your collaborative cases have the parties reached partial settlement agreements through the collaborative process while opting for traditional litigation to resolve other issues of dispute?

_____ % of collaborative cases resulting in partial agreements

Answer If Please select all areas in which you actively practice. Traditional Litigation Is Selected

Q14 Approximately what percentage of your traditional litigation cases have resulted in settlement agreements?

_____ % of traditional cases resulting in settlement agreements

Answer If Do you currently practice collaborative law? Yes Is Selected

Q15 Thinking about all your years of collaborative practice, please estimate the ethnic distribution of your collaborative practice clients (in percentages) to the best of your knowledge.

_____ White/Caucasian
_____ Black/African-American
_____ Latino/Hispanic
_____ Asian/Pacific Islander
_____ Other (Native American, Mixed Race)

Answer If Please select all areas in which you actively practice. Traditional Litigation Is Selected

Q16 To the best of your knowledge, please estimate the ethnicity of your practice clients (as percentages) in all your years of practice. Thinking about all your years of traditional litigation practice, please estimate the ethnic distribution of your traditional litigation clients (in percentages) to the best of your knowledge.

_____ White/Caucasian
_____ Black/African-American
_____ Latino/Hispanic
_____ Asian/Pacific Islander
_____ Other (Native American, Mixed Race)

Answer If Do you currently practice collaborative law? Yes Is Selected

Q17 To the best of your knowledge, please estimate the average individual income level of your collaborative clients.

_____ $0 - $30,000
_____ $30,001-$45,000
_____ $45,001-$70,000
_____ $70,001-$100,000
_____ $100,001-150,000
_____ $150,001-$250,000
_____ Over $250,000

Answer If Please select all areas in which you actively practice. Traditional Litigation Is Selected

Q18 To the best of your knowledge, please estimate the average individual income level of your traditional litigation clients.

_____ $0 - $30,000
_____ $30,001-$45,000
_____ $45,001-$70,000
_____ $70,001-$100,000
_____ $100,001-150,000
_____ $150,001-$250,000
_____ Over $250,000

Answer If Do you currently practice collaborative law? Yes Is Selected

Q19 During a typical collaborative case, how many times on average do you meet with...

_____ Your client
_____ Opposing counsel
_____ Both parties and counsel (4-way)
_____ Other parties or individuals (please specify)

If During a typical collaborative case, how many times on av... Other parties or individuals (please specify) Is Not Empty

_____ Additional parties or individuals? (please specify)

Answer If Please select all areas in which you actively practice. Traditional Litigation Is Selected

Q20 During a typical traditional litigation case, how many times on average do you meet with...

_____ Your client
_____ Opposing counsel
_____ Both parties and counsel (4-way)
_____ Other parties or individuals (please specify)

If During a typical traditional litigation case, how many ti... Other parties or individuals (please specify) Is Not Empty

_____ Additional parties or individuals? (please specify)

Answer If Do you currently practice collaborative law? Yes Is Selected

Q21 What is the average number of months you spend on a collaborative practice case?

_____ Average number of months

Answer If Please select all areas in which you actively practice. Traditional Litigation Is Selected

Q22 What is the average number of months you spend on a traditional litigation case?

_____ Average number of months

Answer If Do you currently practice collaborative law? Yes Is Selected

Q23 What is the average number of hours you spend on a collaborative practice case?

Answer If Please select all areas in which you actively practice. Traditional Litigation Is Selected

Q24 What is the average number of hours you spend on a traditional litigation case?

Answer If Do you currently practice collaborative law? Yes Is Selected

Q25 In your practice, what is the average cost per client in a typical collaborative case?

Answer If Please select all areas in which you actively practice. Traditional Litigation Is Selected

Q26 In your practice, what is the average cost per client in a typical traditional litigation case?

Answer If Do you currently practice collaborative law? Yes Is Selected

Q27 What percentage of your collaborative divorce cases involve custody determination?

_____ % of cases involving custody

Answer If What percentage of your collaborative divorce cases invol... % of cases involving custody Is Not Empty

Q28 In your opinion, would you say that custody determinations in collaborative divorce cases differ from custody determinations in traditional litigation?

- ❍ Yes
- ❍ No

Answer If In your opinion, would you say that custody determination... Yes Is Selected

Q52 Please explain why you believe custody determinations in collaborative divorce cases differ from custody determinations in traditional litigation?

Answer If Do you currently practice collaborative law? Yes Is Selected

Q29 Approximately what percentage of your collaborative practice cases involve the consultation of a neutral expert other than a mediator (i.e. health practitioners, psychologists/therapists, financial specialists, etc.)?

_____ Cases involving neutral experts

Answer If What percentage of your collaborative practice cases invo... Cases involving neutral experts Is Not Empty

Q30 What prompts the consultation of such experts?

Answer If What percentage of your collaborative practice cases invo... Cases involving a third party neutral Is Not Empty

Q31 How does the involvement of a neutral expert affect the collaborative process?

Answer If What percentage of your collaborative practice cases invo... Cases involving a third party neutral Is Not Empty

Q32 How does the involvement of a neutral expert affect the quality of the settlement?

Answer If Do you currently practice collaborative law? Yes Is Selected

Q33 What percentage of your collaborative practice cases involve the consultation of a third party neutral or a mediator?

_____ Cases involving a third party neutral

Answer If What percentage of your collaborative practice cases invo... Cases involving a third party neutral Is Not Empty

Q34 What prompts the consultation of a third party neutral or mediator?

Q35 Please describe in a few sentences what you think would help Collaborative Law to grow in Maryland?

Q36 Are you familiar with the Uniform Collaborative Law Act (UCLA)?

- ❍ Yes
- ❍ No

Answer If Are you familiar with the Uniform Collaborative Law Act (... Yes Is Selected

Q37 Please explain your views regarding a potential enactment of the UCLA in Maryland.

Q38 Please describe any limitations of the practice of collaborative law, based on your experience.

Q39 Please describe any benefits of the practice of collaborative law, based on your experience.

Answer If Do you currently practice collaborative law? Yes Is Selected

Q40 How willing would you be to conduct low bono collaborative cases?

- ❍ Very Willing
- ❍ Somewhat willing
- ❍ Not at all willing

Answer If Do you currently practice collaborative law? Yes Is Selected

Q41 How willing would you be to conduct pro bono collaborative cases?

- ❍ Very Willing
- ❍ Somewhat willing
- ❍ Not at all willing

Q43 How long have you been a member of the Maryland Bar Association?

- ❍ 0-5 years
- ❍ 6-10 years
- ❍ 11-15 years
- ❍ 16 years or more

Q42 What is your age?

- ❍ 25-30 years
- ❍ 31-40 years
- ❍ 41-50 years
- ❍ 51-60 years
- ❍ 61 years or older

Q44 What is your current billing rate per hour?

- ❍ $50 - $200 per hour
- ❍ $201 - $500 per hour
- ❍ $501 - $800 per hour
- ❍ $801 - $1,000 per hour
- ❍ $1,000 or more per hour

Q45 What is your gender?

- ❍ Male
- ❍ Female

Q46 What is your race or ethnicity?

- ❍ White/Caucasian
- ❍ Black/African-American
- ❍ Latino/Hispanic
- ❍ Asian/Pacific Islander
- ❍ Native American
- ❍ Other