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April 1, 2009

Mr. John Tacker, Esq.
Charles P. Day & Associates
131 W. 3rd St. Suite M01
Davenport IA 52801

Re: Endorsement of the Uniform Collaborative Law Act

Dear Mr. Tacker,

The Uniform Collaborative Law Act, as now proposed by the National Conference of Law Commissioners on Uniform State Law, represents an important potential milestone in the development of alternative dispute resolution. Collaborative Law ("CL") provides parties in conflict with a private, highly attuned forum in which they can resolve their conflicts by working together in a spirit of co-operation. I am writing on my own behalf, and also on behalf of several other members of the Psychology of Conflict Resolution subcommittee, to urge the ADR Committee to recommend endorsement of the Uniform Collaborative Law Act to the TIPS Council. (See below for brief biographies of the signatories to this letter.)

Collaborative law was first developed and publicized in 1990 by Stu Webb, a Minnesota lawyer determined to find a way to avoid "family law burnout." (See T. Schneyer, *The Organized Bar and the Collaborative Law Movement*, 50 Ariz. L. Rev. 289, 290 n. 2 (2008), citing Stu Webb, *Collaborative Law: An Alternative for Attorneys Suffering "Family Law Burnout,"* 18 Matrim. Strategist 7 (2000).) In CL, parties and their attorneys sign a "four-way" agreement, in which they commit themselves to collaborate in good faith to reach resolution without resort to litigation. They also agree, among other things, to full disclosure and withdrawal of collaborative counsel if the matter does not settle. (See K. Clark, *The Use of Collaborative Law in Medical Error Situations*, 19(6) ABA Health Law., June 2007, at 19.) The lawyers also commit to make the process productive for *both* sides. (Jon Lande, *Possibilities for Collaborative Law: Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering*, 64 Ohio. St. L. J. 1315, 1320-1321 (2003), citing Pauline H. Tesler, *Collaborative Law: Achieving Resolution in Divorce Without Litigation* 7 (2001).)

For the purpose of the Psychology of Conflict Resolution subcommittee, one of the salient features of CL is that the parties' agreements make clear that other professionals may participate in the process, such as mental health experts. (Schneyer, *supra* 50 Ariz. L. Rev. at 29, Sanford M. Portnoy, *New Roles for Psychologists: Divorce Coaching and Training Lawyers in Conflict*

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Management, N. Y. St. Psychol. 9 (June/July 2006).) The use of mental health therapists as a part of the process of resolution places CL in the forefront of interdisciplinary practice and the exploration of the psychology of conflict resolution.

To date, Collaborative Law has been used primarily in the family law area. There is, however, increasing interest in using CL in civil disputes. For example, a serious movement is underway to use CL in civil matters, including the probate, trust and estate litigation area. (See e.g. the Civil Collaborative Practice J. (Claire Spector ed., Spring 2009). The integration of a psychological perspective in this area serves the salutary function of encouraging and requiring lawyers to gain a more sensitive understanding of issues such as elder abuse. (*Id.*)

Real estate, business and employment matters are also being resolved using collaborative law. (See Michael A. Zeytoonian, *Pioneers on the Horizon; Collaborative Law in Employment Disputes*, <http://www.hutchingsbarsamian.com/pdf/employment-disputes.pdf>, Paul R. Faxon, Michael Zeytoonian, *Prescription for Sanity in Resolving Business Disputes: Civil Collaborative Practice in a Business Restructuring Case*, 5(2) Collaborative L. J. Fall 2007, http://www.collaborativelaw.us/articles/Prescription_For_Sanity.pdf, Debra E. Branom, *Business Relationships: Exploring Collaborative Law*, http://www.martindale.com/pdf/c2c/magazine/2006_Sep/C2C0906_BP_Branom.pdf).) CL also has great promise as a tool for resolving other civil disputes, including those involving insurance coverage, adverse medical events and patient safety matters. (See Clark, *supra* on CL in medical error cases.)

Since CL represents an innovative approach to resolving civil litigation, it will profit greatly from the endorsement and support of bar associations, such as our own American Bar Association. It is our hope that with that support we will see a flowering and refinement of this new way of resolving disputes.

We are not without points of difference with the exact language used in some sections of the Uniform Collaborative Law Act; over time, improvements to the Act may certainly be justified. Provisions which help facilitate the use of CL in multi-party cases may be particularly welcome to practitioners working in complex disputes. However, at this juncture in history, it is important to endorse the Act as written in order to help jumpstart this important movement in dispute resolution.

Thank you very much.

Sincerely yours,

/s/

Elizabeth E. Bader, Esq.

cc: Susan Farina
Larry Maxwell
All signatories

Signatories to this Letter

Elizabeth E. Bader is the Chair of the Psychology of Conflict Resolution Committee, which is a subcommittee of the TIPS ADR Committee. She is the author of "*The Psychology of Mediation: Issues of Self and Identity and the IDR Cycle*" and other articles. Elizabeth has successfully mediated multi-party, high-dollar-value, mass-tort-related insurance coverage litigation, and a wide variety of other cases. Prior to becoming a mediator, Elizabeth was an appellate specialist with 15 published opinions ; she argued cases before the California Supreme Court and the Ninth Circuit. She played an important role in a case that helped shape the law of mediation confidentiality in California. See *Rojas v. Superior Court* (2004) 33 Cal. 4th 407, 418, fn. 7. www.elizabethbader.com

Kathleen Clark recently received her PhD in Social sciences, with a dissertation entitled "Bringing Dialogue and Collaborative Law To Health Care". She has published articles on collaborative law in medical error situations and on the use of dialogue among stakeholders in health care. Kathleen has practiced law and mediation in the San Francisco Bay Area for the last twenty years, has been a California MCLE provider, and has convened and facilitated health care dialogues. She also has a masters degree in business management.

Jeanne Fahey is an attorney with The Davis Law Firm, a San Francisco Employment and Litigation boutique. Jeanne advises small and medium sized employers on a range of employment issues and represents them in litigation and administrative proceedings. Jeanne was an early leader in the effort to expand Collaborative Law from family law to other disputes, organizing the first nationwide dialogues on the subject from 2004 to 2005. She is a member of the ethics subcommittee of the ABA's Collaborative Law Committee and participated in drafting a Summary of Ethics Rules Governing Collaborative Practice, a working draft of which is posted for comments at:
http://meetings.abanet.org/webupload/commupload/DR035000/sitesofinterest_files/Ethics_Paper_2009_02_02.pdf

Claire Spector is a collaborative attorney, mediator and financial neutral. She pioneered the use of corporate collaborative co-venture agreements in New York in 1985. She serves as co-chair of the Collaborative Council of the Redwood Empire (CCRE) Civil Collaborative Practice Committee, founder and editor of the CCRE Civil Collaborative Practice Journal, and as a founding member of the CCRE Committee's Civil Collaborative Practice Study Group.

