

# THE FUTURE OF COLLABORATIVE PRACTICE: A VISION FOR 2030<sup>1</sup>

Forrest S. Mosten

“You are not here simply to make a living. You are here in order to enable the world to live more amply, with greater vision, with a finer spirit of hope and achievement”<sup>2</sup>

*Woodrow Wilson, 28th President of the United States  
Visionary of the League of Nations*

In just twenty years, collaborative practice has grown and blossomed into a powerful force in the world of conflict resolution. The goal of this special issue has been to examine the state of collaborative practice today, where some leading collaborative practitioners believe we are heading in the near future and, now, I offer some of my predictions of where the field may be twenty years from now, in 2030. It is clear to everyone who is touched by collaborative practice that it is truly a very effective way to help our clients and that the future is wide open to build and improve collaborative practice in directions that may seem impossible to fathom in 2011. Here are twelve ways in which collaborative practice will evolve in the next two decades:

## **I. CLIENTS WILL DEMAND COLLABORATIVE PRACTICE AND MEDIATION FROM PROFESSIONALS AND MAKE IT THEIR FIRST CALL IN TIME OF CONFLICT**

Being a rights-based and competitive society, both the public and the legal profession have encouraged the expanded use of lawyers to remedy and redress problems and damages. Historically, when in conflict, people generally have made their first call to a lawyer with the expectation of having the justice system vindicate the situation. The consequence of this custom has been to create lawyer domination of disputes, often with a legalistic and narrow approach to resolving those disputes.<sup>3</sup> However, as collaborative law has clearly demonstrated, the public is becoming more aware of the downsides of litigation with its emotional and financial costs that can potentially destroy the disputants and their children. The explosive growth of collaborative practice shows that the public, when aware, will often choose a nonadversarial option and will likely receive better results in the end.

With consumer use of collaborative practice, mediation, other new paradigm<sup>4</sup> client centered services, in twenty years, I predict that the first call of a person in legal trouble will more often be to a mediator, collaborative law attorney or other non-litigation professional. Forty years of collaborative practice will have earned the respect and confidence of the public so that it will be a top process choice of both consumers and recommending professionals.

## **II. THE UNIFORM COLLABORATIVE LAW ACT WILL BE ENACTED IN MOST STATES AND VERSIONS OF IT WILL BE THE LAW IN JURISDICTIONS OUTSIDE OF THE UNITED STATES**

Uniform Laws not only provide templates for individual states to consider—the adoption of a uniform law, in itself provides legitimacy for new forms of legal practice.<sup>5</sup> As more and more jurisdictions pass legislation with amended versions of the UCLA there will be a logrolling effect—

Correspondence: [www.MostenMediation.com](http://www.MostenMediation.com)

momentum will build for collaborative law as policy with courts, professionals, and the public giving support for that policy.<sup>6</sup> The Prefatory note authored by Professor Andrew Shepard, Reporter of the Uniform Law and Editor of this Journal, is probably the best statement of the conceptual and legal underpinnings of collaborative law.<sup>7</sup>

### **III. COLLABORATIVE PRACTICE WILL BE INCORPORATED INTO THE MAINSTREAM OF THE LEGAL PROFESSION**

In addition to being an alternative to trials, collaborative practice will become an integral part of ancillary court programs, education for litigants,<sup>8</sup> and lists of collaborative practitioners will be available for litigants at consumer self service centers and client libraries within the courthouse.<sup>9</sup>

The momentum built by the ABA Ethical Opinion<sup>10</sup> conditionally approving collaborative law as an ethical practice (if based on informed consent) and the passage of the UCLA will lead to specific professional rules of conduct on both national and state levels involving collaborative practice. While such model rules have currently been promulgated primarily within the collaborative community, just as unbundling legal services<sup>11</sup> and mediation<sup>12</sup> have been the subject of rule-making by the organized legal profession, collaborative practice will follow suit. The consideration and promulgation of such rules by the ABA and local bar associations and law societies will further legitimize collaborative practice and make it more accountable. Texas has already established a separate state bar section on collaborative practice rather than have collaborative practice as a sub-section or committee of a family law or dispute resolution section.<sup>13</sup> In 2030, the state or nation without an independent section for collaborative practice will be the exception.

Family lawyer education and specialization will include increased training in negotiation, mediation, collaborative law, and other innovative alternatives. Just as the Law Society of New South Wales<sup>14</sup> has developed a specialization in dispute resolution (in addition to substantive areas such as family law, tax, etc), most bar associations and law societies will develop similar specialization programs that will include collaborative law by 2030.

To prepare future lawyers, every law school will have at least a survey course on collaborative practice.<sup>15</sup> Most schools will have companion courses in unbundled legal services, lawyer as peace-maker<sup>16</sup>, interdisciplinary service delivery, and advanced courses in traditional subject areas (family law, trial advocacy, client counseling, business planning) that will feature modules of collaborative practice.

### **IV. MENTAL HEALTH AND FINANCIAL PROFESSIONAL BODIES WILL INCORPORATE COLLABORATIVE PRACTICE INTO THEIR RULES OF PROFESSIONAL CONDUCT AND BE PART OF PROFESSIONAL EDUCATIONAL CURRICULUM**

As an interdisciplinary form of service delivery and opportunity for new professional opportunities, collaborative practice will become part of the professional education and license qualification for mental health and financial professionals. Just as mediation training qualifies for continuing educational credit for these professionals in many jurisdictions, collaborative practice courses will be long approved for continuing educational credit by 2030.

In the mental health field, in addition to traditional education for future therapists and social workers, students will need training to perform professional roles such as: neutral or party collaborative coach; neutral collaborative child specialist; neutral sole mediator; interdisciplinary co-mediator; coach for parties in mediation; divorce coach for pro se litigants; parenting comprehensive or mini-evaluator; special master; parenting coordinator; and therapist specializing in helping families go through divorce and competently advise clients about legal process, including collaborative law.<sup>17</sup> Mental health professionals can join lawyers and other professionals in playing this triage

role in their private offices. Mental health professional and educational bodies will also sanction these new services to qualify for required supervision hours necessary for licensure.<sup>18</sup>

Financial professionals will also modify their coursework to prepare them to work in the “new paradigm” world. In addition to learning the traditional skills of auditing, tax preparation, and in-house business accounting, in 2030, financial students and professionals will be trained to perform these emerging roles: neutral forensic in collaborative practice and mediations; divorce appraisers of ongoing businesses; arbitrators of divorce family issues; expert witnesses in divorce matters; divorce tax specialist; and mediators and interdisciplinary co-mediators.<sup>19</sup>

## V. COURTS AND LEGISLATURES WILL RECOGNIZE COLLABORATIVE PRACTICE AND MEDIATION AS PRIMARY MODELS OF DISPUTE RESOLUTION AND ADOPT A SERIES OF INCENTIVES TO UTILIZE COLLABORATIVE PRACTICE

In the past twenty years, mediation has morphed from being considered *alternative* dispute resolution to *appropriate* dispute resolution (sometimes consensual dispute resolution) to dispute resolution. In the Family Court of Australia, alternative dispute resolution (ADR) is litigation, arbitration, or other “top-down” processes.” Primary dispute resolution (PDR) includes mediation, collaborative practice, negotiation, and other “bottom-up” consensual processes. By 2030, most jurisdictions will have adopted the Australian model of PDR. In addition to being an alternative to courts, collaborative practice will become an integral part of court programs, education for litigants, and lists of collaborative practitioners will be available for litigants at consumer self service centers<sup>20</sup> and client libraries within the courthouse.<sup>21</sup>

The innovative reforms currently in place to encourage use of collaborative law will become commonplace. Already, a few jurisdictions are taking steps to promote collaborative practice and mediation with the goal of easing the court load and helping the public resolve conflicts in a faster and less painful process. For example, now, in 2010, in the Los Angeles Superior Court every litigant is sent a letter from the Presiding Judge of the Family Law Department encouraging the use of collaborative practice and mediation.<sup>22</sup> The Presiding Judge handles all collaborative law matters (signing of Participation Agreement with Qualification Clause is required<sup>23</sup>) so that parties are not required to attend standard status conferences and other court proceedings while the collaborative process is ongoing, and parties who complete their settlements within the collaborative process are afforded expedited processing of their judgments. There are incentives in place already to reward those parties who use these methods of dispute resolution and the movement towards increasing these incentives is very positive momentum to increase the responsiveness of the court system to the needs of its citizens. Additionally, the societal encouragement to expand the dispute resolution process beyond adversarial litigation will continue to be implemented in the courts as they will continue to favor collaborative practice and mediation and other processes that empower litigants to take control over the process of resolving legal disputes.

Future reforms that will be part of the collaborative landscape in 2030 may include<sup>24</sup>:

- A. Assignment of collaborative law matters will generally be made to one court with a trained settlement judge who can monitor cases and keep them out of the general litigation system.
- B. Collaborative cases will be identified as such in court filings with criteria developed for such identification by court staff.
- C. Attorney fee awards will be given credit if counsel suggests or agrees to collaborative law in appropriate cases. Similarly, those parties that refuse to participate in collaborative practice without a reasonable basis will be taxed in respect to attorney fees incurred during litigation.
- D. Just as there is mandatory mediation for many custody and visitation issues, judicial officers will be given authority to order cases into collaborative law. Such collaborative practice will be generally paid by the parties using these services with relief *In forma pauperis* for those parties who can demonstrate an inability to pay.

- E. Traditional cases in the system (including those involving post-decree issues) involving self represented litigants will be subject to judicially initiated crash collaborative settlement teams of collaborative lawyers, mental health professionals and financial professionals who will meet with the parties either in the courthouse or in private offices.
- F. Just as courts have mandatory parenting education programs, courts and legislatures will fund and promote mandatory “process” education for litigants that will include major segments on collaborative practice.
- G. Judges, family court services, and clerks will routinely participate in court sponsored training for interest based negotiation, mediation, collaborative practice, and other skills of consumer service to improve legal access.<sup>25</sup>
- H. Collaborative practice organizations will have longstanding positive relationships with the bench for increased understanding on collaborative innovations put into place within the court system and needs of the courts to which the collaborative community might contribute.
- I. Courts, legislatures, and other government bodies will have established sophisticated programs of generic advertising and consumer education<sup>26</sup> for more public and professional understanding and use of collaborative practice.
- J. Courts, government and professional bodies will have collaborative practice Impact Reviews of Laws and Policies<sup>27</sup> to assure consistency of such laws and policies with the goals of collaborative practice.

## **VI. MEDIATION WILL BE AN ACCEPTED AND OFTEN USED FEATURE WITHIN COLLABORATIVE PRACTICE**

By 2030, the early power struggle and misguided conflict between mediation and collaborative practice will be a faded footnote in peacemaker history. Mediation will be used routinely in collaborative practice with independent mediators joining the collaborative process and collaborative professionals being engaged by clients to support mediations. In addition, neutral facilitation for conflicts between members of the collaborative team will be standard protocol. Such facilitation will be conducted by team members themselves and/or by use of independent mediators.<sup>28</sup>

Collaborative professionals will be required to undergo extensive mediation training. Such training will be mandated within the collaborative community by umbrella organizations and individual practice groups as well as by courts, professional bodies and legislatures that will have assumed a larger role in support and possibly regulation of collaborative practice.

## **VII. REQUIREMENTS FOR INFORMED CONSENT NOW REQUIRED OF COLLABORATIVE PRACTITIONERS WILL BE REQUIRED OF ALL ATTORNEYS**

The emerging duty of lawyers to competently advise clients about alternatives that is currently in force in many jurisdictions<sup>29</sup> and that is incorporated in the UCLA for collaborative attorneys<sup>30</sup> will be an accepted professional obligation for all attorneys.

In 2030, before filing initial court proceedings, lawyers representing litigants will be required in most jurisdictions to certify that their clients have been fully informed of the benefits and risks of mediation and collaborative representation.<sup>31</sup>

## **VIII. COLLABORATIVE SERVICES WILL BE ROUTINELY UTILIZED BY THE POOR AND OTHER UNDERSERVED POPULATIONS**

At present, collaborative practice is largely limited to the wealthiest segment of American families.<sup>32</sup> Supported by the UCLA’s understanding of the difficulty of the underserved to obtain substitute

counsel if the collaborative process terminates,<sup>33</sup> by 2030 the benefits of collaborative practice will be more fully available to the poor and working poor. While the UCLA requires the involvement of two lawyers to qualify as collaborative law, over the next two decades new processes will develop under different names to encourage collaborative principles and procedures to be used when one party is pro se or has a limited scope lawyer who will not sign a collaborative participation agreement. Other proposals by Professor J. Herbie DiFonzo, seen in his *Vision for Collaborative Law* will become common practice in 2030, including: unbundling use of collaborative professionals so that fees can be reduced;<sup>34</sup> collaborative professionals will more readily refer parties to mediation when a single professional (sometimes supplemented by unbundled counsel) may be more affordable; and court programs utilizing collaborative processes will be part of the court systems in most jurisdictions.<sup>35</sup>

### **IX. COLLABORATIVE PRACTICE WILL BE ROUTINELY USED OUTSIDE OF FAMILY LAW AND MOST LAW FIRMS WILL HAVE INTERNAL COLLABORATIVE AND SETTLEMENT COUNSEL DEPARTMENTS**

The current nascent efforts to extend the collaborative process to business, probate, personal injury, intellectual property and other non-family areas of the law will continue and grow over the next two decades.<sup>36</sup> Mediation consumers today differ in their preference for “process” or “content” oriented mediators. Yet whatever their style at the negotiation table, mediators are known as “mediators.” They may specialize in divorce or in environmental public policy issues, though they are all still called mediators. The same will be true for collaborative professionals by 2030. The values and perspectives that bind collaborative professionals will transcend areas of practice so that family collaborative professionals and non-family (civil) collaborative professionals will all be called collaborative professionals.

Regardless of their areas of practice, different business models of practice will be viewed through the collaborative lens whether collaborative services are provided by sole practitioners working out of their homes or part of large law firms taking up several floors of urban office skyscrapers. Currently, in large corporate litigation, some businesses are retaining separate settlement counsel,<sup>37</sup> who are bound by a disqualification clause built on the family collaborative model. There are two tracks of such settlement counsel: single track and dual track. In the single track, the litigating lawyers “stand down” and create a litigation freeze while settlement counsel work with the parties directly. If no settlement is reached, the litigation counsel steps back in to resume the court proceedings.<sup>38</sup> In the dual track, the litigator and the settlement counsel work on separate tracks and assume that there are litigation-related issues that cannot await settlement efforts. This may occur early in the process, either because there are immediate legal issues that must be addressed or because the client simply wishes to proceed on all fronts without delay, or it may occur later in the litigation process when delay of the litigation process is not practical or not permitted by the court.<sup>39</sup> The model of settlement counsel will evolve and grow so that by 2030, corporate law firms that do not offer settlement counsel will be the exception and at a competitive disadvantage in the law firm marketplace.

### **X. COLLABORATIVE PROFESSIONALS WILL UTILIZE PREVENTIVE SERVICES TO IMPROVE FUTURE RELATIONSHIPS AND AVOID FUTURE CONFLICT**

Collaborative practice has focused on resolving current disputes and conflicts. The future and unlimited marketplace for collaborative professionals is a preventive approach that will be used symptomatically and asymptotically.<sup>40</sup> Symptomatic preventive planning is using the experience, pain, and cost of recent legal trouble to motivate clients to consider ways to avoid similar problems in the future. Asymptomatic legal prevention is working with clients to probe legal soft spots and take steps to prevent future conflict when no dispute is currently raging.<sup>41</sup>

By 2030, it will be standard practice for collaborative professionals who aim to prevent future conflict to build in postsettlement scheduled meetings and assessments with parties who have an ongoing relationship. Collaborative professionals can encourage parties to consider meeting semi-yearly or annually to discuss parenting and/or support agreements. Another asymptomatic approach is for the collaborative professionals to calendar executory settlement provisions or life cycle events for planned future discussion.<sup>42</sup>

In the next twenty years, collaborative professionals will expand services to preventive rather than disputed matters. Building on the success and public acceptance of collaborative resolution of divorce, the public will seek this approach in working out premarital and cohabitation agreements,<sup>43</sup> forming a business, planning an open, surrogate, or step-parent adoption, gearing up for a construction project, or other matters involving continuing relationships.<sup>44</sup>

## **XI. COLLABORATIVE PROFESSIONALS WILL MORE OFTEN BE FULL TIME PEACEMAKERS AND REFUSE ANY ENGAGEMENTS INVOLVING ADVERSARIAL LITIGATION**

Due to the youth of the collaborative movement that has not yet developed into a critical mass of profitable practice, most collaborative professionals are still litigating matters during the majority of their time despite the fact that the number of professionals who devote themselves to full time peacemaking is growing.<sup>45</sup>

Just as specialization of peacemaking lawyering will be institutionalized within the profession,<sup>46</sup> so too will the trend of lawyers who eschew litigation and fill their professional time with direct profitable client peacemaking work such as collaborative practice, unbundled professional services, transactions involving continuing relationships, and confidential evaluative and consulting engagements.<sup>47</sup> While collaborative organizations such as IACP and most practice groups appreciate the need to accommodate both full time peacemakers and those that conduct a collaborative session on Monday morning and are in court on Monday afternoon, by 2030 Nancy Cameron's two-horse dilemma will evolve to collaborative organizations that require their members to be full time peacemaking. This may result in the development of a bifurcated legal profession which somewhat mirrors the British solicitor-barrister model with possibly three types of legal organizations in which collaborative professionals are members: general Bar Associations that permit all licensed attorneys regardless of their professional roles, traditional collaborative organizations that permit lawyers who both litigate and do collaborative work, and peacemaking lawyer organizations that require members to concentrate their training and service solely to non-adversarial processes.

## **XII. COLLABORATIVE PRACTICE GROUPS WILL PROLIFERATE TO EVERY CONTINENT AND EACH GROUP WILL OFFER A MENU OF PRACTICE MODELS**

After twenty years of development, there are practice groups in eighteen countries reported by the International Academy of Collaborative Professionals.<sup>48</sup> Most of the growth outside of North America has occurred in the last five years. By 2030, not only will the number of countries dramatically increase, but also the explosion of collaborative professionals and diversity of practice groups will defy current accurate predictions.<sup>49</sup>

The nature of the practice groups will also change significantly in the next two decades. Today, there are two basic models: open and closed. Open practice groups accept anyone who wishes to purchase membership but often have more restrictive policies of training and practice experience to be able to participate on website referral rosters.<sup>50</sup> Closed practice groups limit membership to build a shared and committed collaborative culture within the group as well as to maximize resources for shared marketing.<sup>51</sup>

Future practice group evolution will provide for single model groups, multi-model groups, and firms of collaborative professionals who generally only work with each other within set interdisciplinary teams and share income and expenses.<sup>52</sup> Other collaborative professionals will share an office but act as independent contractors permitting officemates to be members of different practice groups and different teams.<sup>53</sup> Membership in practice groups will also evolve significantly in the next twenty years. In addition to lawyers, mental health professionals and financial professionals (neutral and party coaches, child specialists, and treating therapists and social workers), such groups may be open to physicians, real estate and insurance professionals, mediators and dispute system designers, and other professionals interested in and committed to collaborative practice.

### XIII. CONCLUSION

This article offers twelve predictions of ways in which collaborative practice will grow and flourish within the next twenty years. As in all predictions, these are guesses about how collaborative practice will develop based on past experience of the field's development, coupled with my personal vision for the future.

The key to whether these predictions will come true may depend on the vision created by current collaborative professionals and those that choose that path in the years ahead. For over twenty years my inspiration in this context has been Tom Peters' discussion of how vision works and such insight may also benefit the collaborative movement:

- A vision is inspiring
- A vision is clear and challenging—and about excellence
- A vision makes sense in the marketplace and stands the test of time
- A vision must be stable but constantly challenged
- A vision is a beacon and controls your actions when all else is up for grabs
- A vision is aimed at empowering you first, and your clients second
- A vision prepares for the future, but honors the past; and
- A vision is lived in details, not in broad strokes<sup>54</sup>

Peters' criteria for the vision of Collaborative Practice may be the foundation for the baby steps necessary to build on collaborative practice's current foundation, to achieve the implementation and lessons from the research agenda proposed by John Lande<sup>55</sup> and others to help expand the reach of the field to increase its access to the underserved, to expand services offered within the collaborative umbrella, and to create impact of collaborative practice on professional service providers, on the institutions that support it, and for the public that we serve.<sup>56</sup>

### NOTES

1. Special gratitude and recognition for the inspiration of future visioning of the Oregon Task Force on Family Law Reform Commission (William Howe III) and the Oregon Supreme Court's ground breaking publication, *Justice 2020* (Wallace Carson, Chief Justice). See William Howe III & Maureen McKnight, *Oregon Task Force on Family Law: A New System to Resolve Family Law Conflicts*, 33 FAM. & CONCILIATION CTS. REV. 173 (1995); see also J. Herbie DiFonzo, *A Vision for Collaborative Practice: The Final Report of the Hofstra Collaborative Law Conference*, 38 HOFSTRA L. REV. 569 (2009). My own desire to vision the future was influenced by my mentor, Professor Louis M. Brown (1909–1996). In 1989, Professor Brown, the recognized Father of Preventive Law, crafted an Agenda for the Future with sixty-eight recommendations. Unpublished Agenda and Supporting Memoranda are in the author's possession and available upon request.

2. Woodrow Wilson, [http://www.brainyquote.com/quotes/authors/w/woodrow\\_wilson.html](http://www.brainyquote.com/quotes/authors/w/woodrow_wilson.html) (last visited Nov. 26, 2010).

3. Leonard L. Riskin & Nancy A. Welsh, *Is That All There Is? "The Problem" in Court-Oriented Mediation*, 15 GEO. MASON L. REV. 863, 932 (2008) (commenting on the impact of lawyers and lawyer mediators in narrowing the problem definition and discussion court mediation settings to reflect lawyer perspectives).

4. See FORREST S. MOSTEN, *COLLABORATIVE DIVORCE HANDBOOK: HELPING FAMILIES WITHOUT GOING TO COURT* (2009).
5. For an overview of the impact of the UCLA, see the special issue on the UCLA, by Hofstra Law Review and The Collaborative Review: 38 HOFSTRA L. REV. (Winter 2009); 11 COLLABORATIVE REV. (Summer 2010).
6. For a hint of how synergy from various sectors built the field of mediation, see Forrest S. Mosten, *Institutionalization of Mediation*, 42 FAM. CT. REV. 292 (2004).
7. The final version of the Uniform Collaborative Law Act (2010) can be found at [http://www.law.upenn.edu/bll/archives/ulc/ucla/2010\\_final.htm](http://www.law.upenn.edu/bll/archives/ulc/ucla/2010_final.htm).
8. See Letter to Litigants, [www.wiley.com/collaborativedivorcehandbookdownload#22](http://www.wiley.com/collaborativedivorcehandbookdownload#22) (last visited Nov. 26, 2010).
9. See FORREST S. MOSTEN, *Mediation Legacy: The Family Law System of the Future*, in THE COMPLETE GUIDE TO MEDIATION 373 (ABA 1997); Forrest S. Mosten, Southern California Mediation Association Conflict Resolution Library Fund, <http://www.scmmediation.org> (last visited Nov. 26, 2010).
10. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 07-447 (2007).
11. See ABA Unbundling Resource Center, <http://www.abanet.org/legalservices/delivery/delunbund.html> (last visited Feb. 11, 2011). This is the ABA's resource center maintained by the Standing Committee on the Delivery of Legal Services. This is the clearinghouse for links to a wide variety of materials on unbundling. See also MOSTEN, *supra* note 4; FORREST S. MOSTEN, UNBUNDLING LEGAL SERVICES (2000); Forrest S. Mosten, *Unbundling Legal Services to Help Divorcing Families*, in INNOVATIONS IN FAMILY LAW PRACTICE (Kelly B. Olson & Nancy Ver Steegh eds., Association of Family & Conciliation Courts 2008); Forrest S. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 FAM. L.Q. 421, 449 (1994).
12. In his fall 2010 column as chair of the ABA Dispute Resolution Section, Wayne Thorpe outlined just a few of such developments in mediation: Model Standards of Conduct for Mediators (2005), Uniform Mediation Act (2002), Section of Dispute Resolution's Resolution on Good Faith in Mediation (2004), and Amended Model Rules of Conduct, especially Rules 1.12. and 2.1. R. Wayne Thorpe, *From the Chair*, 17 DISP. RESOL. MAG. 2 (Fall 2010); R. Wayne Thorpe, *From the Chair*, Dispute Resolution Magazine 2888 (Fall 2010).
13. Harry Tindall, a national leader in collaborative practice, reports the following: "The Collaborative Law Section, State Bar of Texas, was created this spring by a unanimous vote of the State Bar Board of Directors. Being part of the state bar has many advantages. We are now at the table along with other sections and we are viewed as real lawyers. We have the marketing assistance of the bar in creating websites, blast email and assistance in continuing education programs. Kevin Fuller, partner in the largest family law firm in Texas, is Chair of our section." Posting of Harry Tindall, [htindall@tindallengland.com](mailto:htindall@tindallengland.com), to CollabLaw@yahoogroups.com (July 25, 2010) (on file with author).
14. See *Dispute Resolution Evolves from Mediation*, LAW SOC'Y J. 19 (2010). A similar proposal has been made by this author for consideration in the United States. MOSTEN, *supra* note 4, available at <http://www.wiley.com/WileyCDA/WileyTitle/productCd-0470395192,descCd-DOWNLOAD.html> (last visited Nov. 26, 2010).
15. The Family Law Education Reform Project has already discussed such law school curriculum and produced template modules for use by law professors. See Forrest S. Mosten, *The Potential of the Family Law Education Reform Project for Family Lawyers*, 45 FAM. CT. REV. 5-11 (2007); Mary E. O'Connell & J. Herbie DiFonzo, *The Family Law Education Reform Project*, 44 FAM. CT. REV. 524-70 (2006).
16. See Syllabus for Hamlin School of Law, F.S. Mosten, *Institutionalizing Peacemaking in Society and Within the Legal Profession* (2009), <http://groups.yahoo.com/group/CollabLaw/files/Goodies%20from%20Woody%20Mosten/> (last Visited Nov. 26, 2010).
17. In his groundbreaking concept of the Open Door Courthouse at the 1976 Pound Conference, ADR legend, Professor Frank Sander envisioned a triage system in which court consumers would select the appropriate process option that would best fit their case and their personal needs. Frank E.A. Sander, *Varieties of Dispute Processing*, 70 F.R.D. 111 (1976).
18. For example, in California and many other jurisdictions, to qualify for a license, after fulfillment of required course credits and successful passing of written and oral exams, clinical psychologists, social workers, and family therapists must prove completion of 3,000 hours of supervised client work (the number of required hours and inclusion of an oral exam or other supplemental exams [(i.e. Professional Ethics) differ among jurisdictions]).
19. In some Collaborative Full Team Models (see article by Pauline Tesler 239 in this issue), Collaborative Financial Neutrals assume a facilitative mediator role within the professional team who otherwise might have formal alignment with a party. Financial Professionals could benefit from conflict resolution education and training to competently fulfill this neutral role.
20. See MOSTEN, *supra* note 9, at 373 (describing the innovative consumer reforms of the Maricopa Superior Court).
21. See Southern California Mediation Association, Forrest S. Mosten Conflict Resolution Library Fund, [www.scmmediation.org](http://www.scmmediation.org) (last visited Jan. 8, 2011).
22. The full letter in English and Spanish can be found in MOSTEN, *supra* note 14, at Appendix A: Additional Resources.
23. For the template for such Collaborative Stipulation, see *id.*, at Document #3.
24. My thanks to Judge Mark Juhas of the Los Angeles Superior Court for his contributions in discussions with me in respect to the following future court reforms. Any criticism of these predictions should be directed solely to me and Judge Juhas is released and held harmless therefrom.
25. See Forrest S. Mosten, *Mediation and the Process of Family Law Reform*, 37 FAM. & CONCILIATION CTS. REV. 429 (1999).

26. For a 2011 model of such public support of conflict resolution advertizing, see Justice Matters, *Maryland Access to Justice Commission*, <http://mdcourts.gov/publications/ejusticematters/2009/summer/accesstojusticecommission.html> (last visited Jan. 8, 2011); see also Center for Conflict Resolution at Salisbury University, *Honorable Robert M. Bell*, [http://www.conflict-resolution.org/sitebody/education/lecture\\_series/Bell.htm](http://www.conflict-resolution.org/sitebody/education/lecture_series/Bell.htm) (last visited Jan. 8, 2011).

27. For a similar proposal for Settlement Impact Studies within family courts, see Mosten, *supra* note 25, at 142.

28. At a minimum, collaborative practice and mediation will intersect in seven ways:

1. Advise clients about mediation at the initial consultation, and compare and contrast it with collaborative law.
2. If your client chooses mediation, you can provide unbundled professional services with a collaborative perspective outside mediation sessions.
3. If your client chooses mediation, review and draft agreements reached in mediation and negotiate further for clients outside mediation sessions.
4. If your client chooses mediation, you can provide collaborative coaching and representation at the mediation session itself.
5. Bring in a mediator at the beginning of the collaborative process.
6. Bring in a mediator if problems or an impasse develop during the collaborative process or if the collaborative process is suspended or terminated.
7. Bring in a mediator to resolve conflicts between professionals.

Mosten, *supra* note 14, at 68–69. See also Fred Glassman, *Medi-Collab: Making Room at the Table for Creative Lasting Resolution*, 9 COLLABORATIVE REV. 30–31 (2007).

29. ROBERT F. COCHRAN, JR. ET AL., *THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING* 135–45 (Lexis Nexis 2d ed., 2009). See THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* 21 (West, 2d ed. 2006); Robert F. Cochran, Jr., *Educating Clients on ADR Alternatives: The Rules of Professional Conduct Should Require Lawyers to Inform Clients About ADR*, L.A. LAW., Oct. 2002, at 52; Robert F. Cochran, Jr., *Professional Rules and ADR: Control of Alternative Dispute Resolution Under the ABA Ethics 2000 Commission Proposal and Other Professional Responsibility Standards*, 28 FORDHAM URB. L.J. 895, 897–901 (2001); Forrest S. Mosten & John Lande, *The Uniform Collaborative Law Act's Contribution to Informed Client Decision Making in Choosing a Dispute Resolution Process*, 38 Hofstra L. Rev. 611, 617 n.14 (2009).

30. See UCLA § 14(2).

31. See John Lande & Forrest S. Mosten, *Collaborative Lawyers' Duties to Screen the Appropriateness of Collaborative Law and Obtain Clients' Informed Consent to Use Collaborative Law*, 25 OHIO ST. J. ON DISP. RESOL. 347 (2010); Mosten & Lande, *supra* note 29, at 611.

32. See DiFonzo, *supra* note 1, at 604.

33. See UCLA § 10b; Di Fonzo, *supra* note 1, at 605.

34. See article by the Cypress Practice Group of Seattle, Washington at p. 249 in this issue.

35. See DiFonzo, *supra* note 1, at 606.

36. See International Academy of Collaborative Professionals, *Civil Collaborative Practice*, [http://collaborativepractice.com/\\_t.asp?M=2&T=Civil](http://collaborativepractice.com/_t.asp?M=2&T=Civil) (last visited Jan. 8, 2011). See generally SHERRIE ABNEY, *AVOIDING LITIGATION: A GUIDE TO CIVIL COLLABORATIVE LAW* (2005). See also Mosten, *supra* note 22, at 176.

37. See Kathy A. Bryan, *Why Should Businesses Hire Settlement Counsel*, 2008 J. DISP. RESOL. 195. Bryan offers her own agenda for future dialogue on Settlement Counsel:

1. A range of options allowing flexibility in the process, such as borrowing from Leonard Riskin's "grid" concept to refine the range of collaborative law options.
2. Exploring the importance of the disqualification provision in the commercial context, including ethical considerations.
3. More settlement counsel practitioners who are trained in interest-based negotiation and mediation advocacy skills.
4. The use of tiered dispute resolution clauses with an initial step that includes some elements of collaborative law, such as the equivalent of a four-way meeting with settlement counsel before the next step, which could be mediation, arbitration, or filing suit.
5. Using different techniques with settlement counsel such as:
  - a. For a range of matters within a business. Often settlement counsel can see patterns among classes or types of cases that allow them to maximize settlement opportunities.
  - b. Unilaterally. When opposing counsel refuses to engage parallel settlement counsel, even one side's settlement counsel can effectively negotiate directly with litigation counsel.
  - c. With and without the disqualification provision. The "pure" form of collaborative law is not always necessary.
  - d. With alternative fee arrangements and other economic incentives. Many settlement counsel are adept at using creative fee arrangements with incentives since they are confident that the overall transaction cost will be lower with early and effective settlements.
  - e. Designating and developing a modified settlement counsel position, where appropriate, on in-house legal staffs. In-house counsel frequently view themselves as settlement counsel and, when they can be objective about the matter, can be highly effective in that role.
6. More defined information exchange procedures applicable to business settings.
7. Client education on preventive legal counseling and interest-based negotiation.

8. Continuing to increase awareness about educational institutions' tendency to emphasize adversarial training.
9. Promoting graduate legal and business curriculums on problem solving and collaborative methods of dealing with conflict.

*Id.*, at 201.

38. Tom Collier of the Washington DC law firm Steptoe and Johnson, has developed a Settlement Counsel group at his firm that specializes in this collaborative practice model. Remarks of Tom Collier at Symposium of Innovative Lawyering at the University of Missouri School of Law (Professor John Lande, Convenor), October 2008.

39. O. RUSSELL MURRAY, *THE MEDIATION HANDBOOK: EFFECTIVE STRATEGIES FOR LITIGATORS* (2006).

40. See THOMAS D. BARTON, *PREVENTIVE LAW AND PROBLEM SOLVING: LAWYERING FOR THE FUTURE* (2009); LOUIS M. BROWN & EDWARD DAUER, *PLANNING BY LAWYERS: MATERIALS ON A NONADVERSARIAL LEGAL PROCESS* 309 (1978). See also Bruce J. Winick et al., *Preface a New Model for the Practice of Law*, 5 PSYCHOL. PUB. POL'Y & L. 795, 798-99 (1999).

41. Louis M. Brown and other preventive scholars rely on a more developed medical model as an analogy for legal prevention. Just a few of his articles: *Legal Autopsy*, 39 J. AM. JUDICATURE SOC'Y 47 (1955); *Family Lawyer and Preventive Law*, 35 CAL. ST. B.J. 43 (1960); *Preventive Medicine and Preventive Law: An Essay That Belongs to My Heart*, 11 LAW MED. & HEALTH CARE 220 (October 1983). To explore use of symptomatic preventive legal tools such as Protocols for Future Dispute Resolution and Methods to Assure Compliance with negotiated agreements, see Forrest Mosten, *Lawyer as Peacemaker: Building a Successful Practice Without Ever Going to Court*, 43 FAM. L.Q. 389 (2009).

42. This is based on the preventive law maxim that a "file never closes" and when clients leave your office, they should know when lawyer and client will next meet and how the meeting will be arranged and by whom. Parties can anticipate the need for meetings prior to the date the family residence has been scheduled to be sold, when children obtain the age to change schools or begin driving, or when spousal support is set to end so that child support and other issues may need refinement. Similar preventive discussions can follow successful Collaborative Settlement in nonfamily matters.

43. See Sandra M. Rosenbloom & Judith C. Nesburn, *Isn't It Unromantic: Collaboratively Negotiating Pre and Post Nuptial Agreements*, 10 COLLABORATIVE REV. 18 (2008); MOSTEN, *supra* note 4, at 174-76.

44. To support this preventive role, more collaborative professionals will establish client libraries in their offices to offer preventive client education. A client library is a collection of consumer-friendly books, DVDs and videos, audiotapes, brochures, and other resources. It can be the clients' home in the collaborative professional's office in which clients draft their own documents, make private telephone calls to family members or other support persons, or just have a private cry. See MOSTEN, *supra* note 4, at 180-81; FORREST S. MOSTEN, *MEDIATION CAREER GUIDE: A STRATEGIC APPROACH TO BUILDING A SUCCESSFUL PRACTICE* 110-13 (2001).

45. The inner conflict of balancing collaborative and litigative professional lives has been likened to one rider trying to ride two horses at the same time. See NANCY CAMERON, *COLLABORATIVE PRACTICE: DEEPENING THE DIALOGUE* 66, 97 (2004).

46. See *supra* note 28.

47. See Mosten, *supra* note 41.

48. International Academy of Collaborative Professionals, Collaborative Practice Groups, [http://www.collaborativepractice.com/\\_t.asp?M=7&T=PracticeGroups](http://www.collaborativepractice.com/_t.asp?M=7&T=PracticeGroups) (Last visited Nov. 26, 2010).

49. With more reporting of practice group activity such as the Cypress Practice Group at p. 249 in this issue, such modeling alone will be a catalyst for growth of the field.

50. Proponents of the open membership model stress the nonelitist nature of these groups and believe that opening up membership will enroll more professionals who are eager to learn about collaborative practice. The goal is to create more momentum in the community and generate fresh ideas that improve the practice group as well as attract more membership dues to the practice group treasury. MOSTEN, *supra* note 4, at 109-11.

51. *Id.* at 110-13.

52. The world's leading model and recipient of the 2010 ABA Lawyer as Problem Solver Award for Organizations is the Boston Law Collaborative which offers a variety of services and reports staggering growth, [www.BostonLawCollaborative.com](http://www.BostonLawCollaborative.com) (last visited Nov. 26, 2010).

53. See Collaborative Alliance, a floor of offices in Edina, Minnesota, which many different collaborative professionals call home. They share offices and resources but not income. They are also open to work in various models with a variety of professionals. See [www.thecollaborativealliance.com](http://www.thecollaborativealliance.com) (last visited Nov. 26, 2010); MOSTEN, *supra* note 4, at 112-13.

54. TOM PETERS, *THRIVING ON CHAOS: HANDBOOK FOR A MANAGEMENT REVOLUTION* (1987).

55. See John Lande, *An Empirical Analysis of Collaborative Practices*, p. 257 in this issue.

56. I started making predictions for the legal profession in 1972 when Steven Meyers, Len Jacoby, and I opened the first legal clinic in the United States. At that time the Beatles were the rage and we could not fathom what the legal field would look like "when I'm 64." Now that I am 64, I look forward to writing an update on my current predictions in 2030.

*Forrest S. Mosten is a collaborative lawyer and mediator who has been in private peacemaking practice in Los Angeles since 1979. He balances his professional time by serving as an adjunct professor of law at UCLA and keynotes conferences and presents trainings worldwide. He is the author of four books and numerous articles in the areas of collaborative practice, mediation, unbundling legal services, building profitable professional practices, expanding legal access, and peacemaking. He is a frequent contributor to Family Court Review (FCR) and this is the third FCR special issue for which he has been guest editor.*