IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

ADM 2017-01195

IN RE: PETITION TO ADOPT A NEW RULE OF THE TENNESSEE SUPREME COURT CONCERNING THE PRACTICE OF COLLABORATIVE FAMILY LAW

Grant C. Glassford (#12640)
The Chapple Building
5115 Maryland Way, Suite 301
Brentwood, TN 37027
(615) 376-9800
grant@gglassford.com
Proponent of Rule

Comes now attorney, Grant C. Glassford and submits the following Comment in support of the Tennessee Bar Association's Petition to Adopt a New Rule of the Tennessee Supreme Court Concerning the Practice of Collaborative Family Law.

I graduated from Vanderbilt Law School in 1985. After practicing with a 200 lawyer litigation firm in Chicago for two years, I returned to Nashville in 1987 to work as an Assistant District Attorney in the 21st Judicial District. In late 1990, I returned to private practice. For approximately six (6) years I was a member of Stokes & Bartholomew, P.A. Since 2004, I have been self-employed. I have participated in more than fifty (50) jury trial (most while an Assistant District Attorney) and countless contested motions and bench trials. I am have been listed as a Rule 31 Family Law Mediator since 2012, and have mediated multiple cases.

Much of my practice since 2004 has involved representing individuals in family law disputes. In 2009, I was introduced to the concept of collaborative divorce. I am a founding member of Middle Tennessee Collaborate Alliance and am a member of the International Academy of Collaborative Professionals.

Since 2009, I have handled approximately twenty-five (25) collaborative cases. I read with interest the comments posted by my colleague, Benjamin Papa. I concur with Mr. Papa's comments. I want to share some of my thoughts on this unique process:

Many consumers of legal services (i.e., our clients) already know about and want collaborative. Potential clients frequently call and ask about collaborative. Collaborative is happening and growing. The proposed rule will provide structure to this burgeoning method of resolving family law disputes. Whether trained in collaborative, or not, lawyers are going to advertise they are "collaborative professionals" and this rule will impose standards on those lawyers who claim collaborative expertise.

I have had clients finish contested cases, dissatisfied with the time and expense of the litigation process (and yes, some dissatisfied with the result). I don't practice business law, or represent corporations, but my rudimentary understanding is that when companies transact business, companies seek a "win-win" solution. Each party to a transaction, hopefully, walks away somewhat satisfied because the party obtained a desired result. The parties worked together to reach a common goal: Close the transaction. Clearly, at its core, the division of a marital estate is a business transaction. Collaborative provides a logical method for the parties to conclude the transaction.

The use of financial neutrals is particularly helpful in this regard. The lawyers and parties select a financial neutral to gather the necessary financial information so that the parties can make informed and intelligent financial decisions with regard to the marital estate and, if applicable, alimony. In addition, the cost of one person gathering and analyzing financial data and then presenting a concise spread sheet for review and discussion, is less than lawyers on both sides billing clients to mine the same data. The collobarative lawyer does not abdicate his or her professional obligation to look at a parties finances, but uses a more streamlined and efficient process to obtain and analyze the information. Sometimes

appraisals are obtained from third parties. The parties still sign sworn financial statements acknowledging full financial disclosure.

I have found that emotions run high in family law cases. We address topics extremely most important to people: Children, finances and reputations. The Collaborative Divorce Coach is the neutral who facilitates tense discussions and helps clients articulate his or her position so that the clients voice is heard. The Coach keeps one party, or one lawyer from dominating the process. Lawyers are typically not trained to recognize and handle the myriad of emotions that come up in divorce cases and the Divorce Coach can render invaluable help in both validating the emotions that are inevitably part of the process, and with assisting the parties and the lawyers focusing on resolving the disputes, instead of getting caught up in the "he said – she said" spin cycle that so often can hijack a case.

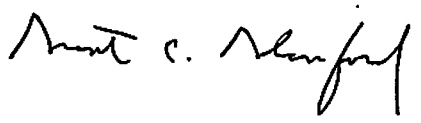
Frequently I tell clients, particularly those with children, that divorce is simply the dissolution of a legal status: Spouse. The *relationship* with the former spouse will continue long after the lawyers close their files and move onto the next case. The parties will still be Mom and Dad and have to interact, so long as they have children. The collaborative process is a method of dispute resolution that recognizes this reality. When it works, the parties can hopefully be better, and more effective co-parents. That is sometimes extremely difficult for parties to accomplish after the blood that is spilled in trial.

Not every case is suited for this process. The clients have to be willing to listen and be open-minded. They have to be transparent about the finances. They have to be able to sit in the same room for a series of meetings looking at and listening to their spouse. They cannot hide behind their lawyers. They have to be able to make decisions. The process can work for highly contentious matters. It can work well when there are complicated marital estates and significant assets to be divided. The lawyer still zealously advocates for the client and works to advance the interests of the client. The lawyer still has protected meetings with the client and continues to render legal advice. We don't abandon the statutes and cases that govern family law matters. We use the law, in conjunction with the facts and the clients' respective goals, in an attempt to reach agreement. The lawyers recognize that while this is a client-centered dispute resolution process, the marital dissolution agreement and the parenting plan must comport with the law and be approved by the court.

Collaborative is simply another form of Alternative Dispute Resolution. It is a process that allows clients to make informed and intelligent decisions about their future. It is not perfect. No dispute resolution process is. I would guess that at least one-half of the litigants who walk out of a courtroom after a contested trial, or who end up in an appeal are not happy. Not every client who concludes the collaborative process will be thrilled with the result, but almost all of the clients I have represented in this process have said they were satisfied with the process. The proposed rule will provide structure and accountability to a process that has been going on for years, is growing and, in my view, is here to stay.

I encourage this Court to support the proposed rule and grant the petition filed by the Tennessee Bar Association.

Respectfully submitted,



Grant C. Glassford (#12640)
The Chapple Building
5115 Maryland Way, Suite 301
Brentwood, TN 37027
(615) 376-9800
grant@gglassford.com

Tuesday, November 21, 2017.

James M. Hivner, Clerk
Re: Collaborative Family Law
Tennessee Appellate Courts
100 Supreme Court Building
401 7th A venue North
Nashville, TN 37219-1407

appellatecourtclerk@tncourts.gov

Re: Collaborative Family Law **No. ADM2017-01195**

Dear Mr. Hivner,

The Tennessee Supreme Court should adopt a collaborative family law rule.

The Tennessee Supreme Court should NOT adopt the currently proposed rule.

The Tennessee Supreme Court should consider and implement a more comprehensive approach to Rule 53 than currently proposed by this petition. As currently proposed, it appears that where the Rule 53 is silent, the intent is that the local association protocols will fill in the gaps. If that is not the intent of the Supreme Court, then the Rule 53 is currently deficient regarding this issue. If that is the intent, it should be clearly stated in the Rule. Currently, the Rule and the proposed Protocols (from MTCA), when combined, leave too many items and relationships unaddressed, under addressed or in conflict. For example, a distinction between Consent and Informed Consent is of paramount importance, as is the timing and sequence of both the information needed for the consent and the actual consent of each party as it relates to the collaborative family law experts.

As proposed, the collaborative family law rule, whether by accident or design, contains no reference, guidance or instruction for the appropriate credentialing and use of the Mental Health Professional (MHP). The petition states that both the east and middle Tennessee collaborative associations contain MHP members and the petition references mental health professionals used as neutrals. In addition, the MTCA has published on its website a document titled "PROTOCOLS OF PRACTICE FOR COLLABORATIVE MENTAL HEALTH PROFESSIONALS" which aggregates multiple counseling degrees into and under the term Mental Health Professional.

A significant concern with the aggregation of those degrees is that it will compromise the ability to perform adequate peer review of the physician psychiatrist and the clinical psychologist, especially when one considers that the intent of Rule 53 is to prohibit the disclosure of the communications of the Mental Health Professional.

As proposed, Rule 53 will allow the Mental Health Professional to wield significant extrajudicial powers of control over a person, including that of enrolling a party or parties and their minor family members into Mental Health "studies" or research. While the prevailing thought is that this extrajudicial power is, in theory, limited by any party's ability to terminate the process without penalty, in reality, the same Mental Health Professional, and therefore their opinion, will be discoverable should the case ever proceed to litigation, whereas their communications will not be.

In addition, as proposed by the protocols published by MTCA, while an attorney is obligated to withdraw should the attorney become aware of inappropriate behavior on the part of the parties, there is no obligation of an attorney to withdraw should the attorney become aware of inappropriate behavior on the part of the other attorneys or mental health professionals. This imbalance has become more relevant over the past few years as the Appellate Court approved "endpoints" have become increasingly extreme. The Appellate Court has broadened what constitutes "abuse" and as a result, what the court considers to be within the discretion of the trial judge regarding the parenting plan. This directly impacts what is termed an *"external standard of legitimacy"*. (See MTCA's Mental Health Professional Protocol, Section 2.01, 3, c. search for external standards of legitimacy to evaluate options. Additional examples and explanations can and will be provided upon request.)

For example, it is unclear how the following two communications, and the actions identified within, would be considered under the proposed Rule 53, if at all. The following is a redacted excerpt of a letter written by attorney Jackie Dixon, former President of the Tennessee Bar Association to psychologist David McMillan, founding member and current practitioner with the Middle Tennessee Collaborative Alliance (MTCA) and copied to attorney Helen Rogers, former Chair of the Family Law Section of the Tennessee Bar Association, founding member and current practitioner with the Middle Tennessee Collaborative Alliance (MTCA). Writes Ms. Dixon to Dr. McMillan (redactions <<within>>);

> *My review of your notes indicates that they do not fully and accurately reflect the scope of the discussions we had on <<Date>>. The issue that prompted our meeting was Helen Rogers and <<Mother's>> insistence that my client <<issue>>, your insistence that he not pick up his children for parenting time until he did so, and <<Father's>> disregard of your request when he picked up his children following the meeting you had with the <<Family>> where this issue was raised. You admitted prior to and during our meeting that this situation was orchestrated by <<Mother>> and her attorney over the <<issue>> issue after <<Father>> had <<action>> for well over a year without such <<issue>>. It was presented to <<Father>> by you during our meeting on <<Date>>, that a decision on the <<issue>> issue and his ability to have parenting time were issues within the scope of your authority under the Parenting Plan entered by the Court. During this meeting you frequently referred to your need to "control" the resolution of this issue and <<Father's>> duty to "obey" and follow your decision. Our position was and remains that there was nothing in the Parenting Plan that required such an issue to be submitted to the parenting coordinator for determination or that <<Father>> be bound by the parenting coordinator's view on this issue.*
>
> *We also discussed your insistence that <<Father>> submit to your "control" and agree that he would do whatever you asked going forward. You stated that he must "obey" you. As my client's advocate, I could not in good faith advise him to simply "obey" and allow you to "control" him as you insisted without even knowing what issues might be involved in the future. <u>It was clear to me that you were asking <<Father>> to unequivocally obey you and allow you to control him regardless of whether you had such authority under the Parenting Plan. This became the breaking point of our discussions.</u> Finally, there was no discussion of your request, as stated in your office note, that you "expected him to agree to follow any future agreements that emerge from a vote of 2 to 1 from the parent coordinator meetings." While I sincerely appreciated your efforts to salvage this relationship and to be of assistance to the <<family>>, I could not agree that you had this much authority over my client, or <<Mother>> for that matter.*
>
> *Your notes from <<Date>>, also refer to email correspondence concerning the issues we discussed that day. The emails were not included with your notes and do not appear to be part of your file which I have previously subpoenaed. Therefore, I have included copies of them with this letter for you to add to your file.*

Two weeks later Ms. Rogers sent, using "Via Hand Delivery" only, a letter to the children's counselors. Ms. Dixon was not included on the communication. Dr. McMillan was. The hand delivered communication stated, in part:

> *Finally, Dr. David McMillan, who had served as parent coordinator in this case, did resign that position due to <<Father's>> non-compliance, but is available to assist you in consultation, should you need him, as to how to best handle issues with the children.*

I applaud the effort to formalize the collaborative family law process by bringing it under a new Supreme Court Rule 53. It is a long overdue concept that has the potential to provide enormous benefit to all (98%) of the stakeholders and users involved. And I would like to suggest the consideration of an alternate end point. Instead of "carving off" this aspect of the judicial system, the Supreme Court should be going straight at it. Make that your legacy.

The creation of a new Rule 53 presents a tremendous opportunity for the Supreme Court to "re-implement" a significant, though dysfunctional component of itself which, when done correctly, can and will scale to the rest of the judicial system. In addition, this transition can be and should be done with no disruption to the remaining components of the current system. If Rule 53 is enacted as currently "envisioned", the Supreme Court will fail to capitalize on an evolutionary opportunity that presents, when compared to the present trajectory, little downside to the court. Instead, the end point could and should be a completely integrated system which provides for greater efficiency through standardized processes with fewer requirements upon the court at all levels to provide clarification of both content and intent.

It is no secret that the judicial system is overburdened. It is no secret that the increase in both the number and complexity of family court cases is, arguably, jeopardizing the administration of the more traditional areas of law. That is not a legitimate reason for the Supreme Court to abdicate its responsibilities under a proposed Rule 53 in such a manner. The current judicial system is not overwhelmed with data. It is overwhelmed with bad data. The current situation is not a result of too much data; it is the result of too much bad data as a result of under-defined processes which are under-monitored with the cost of non-compliance being placed almost entirely upon the conforming members and the public it is meant to serve.

I am not an attorney, so I understand that I may lose my audience with this one, but here comes a lawyer joke; 98% of all attorneys give the other 2% a bad name. I neither believe it, nor do I think it is accurate. Rather, it is probably more along the lines of 2% of all attorneys cause 98% of the contamination within any court system. Over the years I have met some really great people who practice law. Yet, I am continually amazed at how the court system itself fails to protect those in its ranks who try to perform with integrity. What do I mean? Among more than 100 occupations studied, lawyers were three times more likely to suffer from depression than any other profession. Suicide is the third leading cause of death among attorneys. The legal professional is twice as likely as the general population to abuse alcohol or drugs. Multifactorial? Of course. Cause and effect? You bet. And that can change now.

The Supreme Court will own Rule 53; therefore it will also own what occurs under Rule 53.

The Supreme Court should take an assertive leadership role by clearly and fully defining what processes will occur and how any one process will function under Rule 53, including the mechanism for the future oversight of Rule 53, prior to its effective date. As stated, in part, in the Supreme Court Rules:

> Rule 11: Supervision of the Judicial System.
> This Rule is promulgated pursuant to the inherent power of this Court and particularly the following subsections of T.C.A. § 16-3-502, providing that the Supreme Court shall have the power:
>
> I. General.
>
> "(5) To take affirmative and appropriate action to correct or alleviate any condition or situation adversely affecting the administration of justice within the state.
> "(6) To take all such other, further and additional action as may be necessary to the orderly administration of justice within the state, whether or not herein or elsewhere enumerated."
>
> Its purpose is as follows:
>
> c. To promote the orderly and efficient administration of justice within the State.
>
> II. Functional improvement of judicial system - Uniform procedures for data collection in civil and criminal matters in circuit, criminal, chancery, probate, and general sessions courts.
>
> a. The judicial system of this State henceforth will function as an integrated unit under the direction and supervision of the Supreme Court.
> b. Pursuant to its statutory duty to assist the Chief Justice of the Tennessee Supreme Court in improving the administration of justice,
> c. The Court finds that the data collection procedure designed by the Administrative Office of the Courts, in conjunction with the above-named committee, will aid in the accomplishment of the AOC's statutory duties, (T.C.A. § 16-3-803(g)), that the collection of statistical data by the AOC is specifically authorized by statute (T.C.A. § 16-3-803(i)); and that all judges, clerks of court, district attorneys general, district public defenders, other officers or employees of the courts, and all staff of offices or employees related to and serving the courts, are charged with complying with all requests for information from the Administrative Director of the Courts. Further, to ensure that comparable data is collected from all of the courts, data collection shall follow the standard definition of a case as set forth in T.C.A. § 16-1-117.
>
> (3) Case Counting. For purposes of this rule, the term "docket number" is defined as the separate and distinct identification number used for a case once it is filed in criminal, circuit, chancery, or probate court.

As both a comparison and an illustration, consider the rules (and procedures) for Rule 31 Mediations and Mediators. Rule 31 addresses provisions for the administration of the rule, defines proceedings for discipline under the rule and articulates a defined committee for questions addressing ethical behavior.

The proposed Rule 53 contains essentially no structure for interpretation or evolution. Once released to the wild, it is on its own. It is a set of Rules that triggers more questions than it answers. Without a more formal structure, there will be as many interpretations as there are "collaborative associations", unless the court chooses to appoint oversight to a single entity such as MTCA. Instead, the Supreme Court should standardize the process so that any attorney in any county in the State of Tennessee can use the same basic tools to achieve similarly structured documents for Court approval.

A more simple way of stating this is.... When considering Oversight, Participation, Disclosure, Consent, Workflow, Confidentiality and Compliance....Who, does what, where, when, why and how? Who monitors the monitor and what is the cost of non-compliance? And then automate it. It really is that easy.

The Supreme Court should develop the rule, the process and the application (automation) simultaneously. By doing so, the Supreme Court will be able to improve the life of pretty much everyone. For starters, a requirement of the Rule is that every participant has an attorney. If every participant has an attorney, then, immediately, the Supreme Court need not worry if either party has a computer, or knows how to type. If someone IS an attorney, then that someone probably already has a computer and knows how to read and can at least poke on a keyboard. Now that every party will have access to an attorney with a computer, the Supreme Court can begin to think ***binary***. As an example, take a look at Section 4 of the proposed rule. Section 4, if one includes the header, has 13 distinct lines.

As a Rule, it basically states:

1) There will be a Collaborative Family Law Participation Agreement.
2) It must be memorialized in a record.
3) It must be signed by the parties.
4) It must state the parties' intent to resolve a collaborative family law matter through a collaborative family law process under "this section" (although it should really state that it will occur under Rule 53).
5) It must describe the nature and the scope of the collaborative family law matter.
6) It must identify the collaborative family lawyer who represents each party in the process.
7) It must contain a statement by each collaborative family lawyer confirming the lawyer's representation of a party in the collaborative family law process.

If "provisions" is the same as "statements", which one could argue in this context that it is, then:

8) It must contain a statement that the parties will not seek the intervention of the court for the matter while the parties are engaged in the process.
9) It must contain a statement that the court will consider any professionals, experts or advisors engaged by the parties to be neutral and to have been engaged jointly.
10) It must contain a statement that if either party decides to terminate the process and file a pleading with the court, then both parties shall be required to find new lawyers.

If "provisions" is the same as "agreements", which one could argue in this context that it is, then:

11) It may contain one or more additional agreements which are added by the attorneys that do not conflict with the prior statements. One of those agreements may address the payment of attorney's fees.

Now that one knows what must be included and what can be included in the Collaborative Family Law Agreement, one can lay out the process as it would be automated through a user interface. The attorney should be able to click a button labeled "Begin Collaborative Family Law Agreement". The application, behind the scenes, should generate a unique Collaborative Family Law Process Identification Number. Now, it is time to cook with gas. The application should respond to ***enter*** the name of Party 1. The application should respond to ***enter*** the name of Party 2. The application should respond to ***select***

the name of Attorney 1. The application should respond to ***select*** the name of Attorney 2. The application should allow for the ***selection*** of one or more pertinent "matters" to be addressed during the process. The application should allow for the ***selection*** of one or more additional agreements, including a free text box. One of those agreements may address the payment of attorney's fees.

By pressing submit, the application, behind the scenes, should "imbed" a paragraph, approved by the Supreme Court that states that the parties intend to resolve a collaborative family law matter through the collaborative family law process under Tennessee Supreme Court Rule 53. It can even include a little "initial here" line with the party's initials.

By pressing submit, the application, behind the scenes, should "imbed" a paragraph, approved by the Supreme Court that states that the parties will not seek the intervention of the court for the matter while the parties are engaged in the process. It can even include a little "initial here" line with the party's initials. Predetermined exceptions can be included using standard language.

By pressing submit, the application, behind the scenes, should "imbed" a paragraph, approved by the Supreme Court that states that if either party decides to terminate the process and file a pleading with the court, then both parties shall be required to find new lawyers. It can even include a little "initial here" line with the party's initials. The online draft document can even include a "what this means" link.

By pressing submit, the application, behind the scenes, should "imbed" a paragraph, approved by the Supreme Court that states that the court will consider any professionals, experts or advisors engaged by the parties to be neutral and to have been engaged jointly. It can even include a little "initial here" line with the party's initials. The online draft document can even include a "what this means" link.

By pressing submit, the application, behind the scenes, should "imbed" a paragraph, approved by the Supreme Court that states that the attorney represents the corresponding party in the collaborative family law process under Tennessee Supreme Court Rule 53. It can even include a little "initial here" line with the attorney's initials.

By pressing print, one now has 1) a Collaborative Family Law Participation Agreement. By pressing print, one now has 2) a draft record for party and participant signature.

By uploading the document with all of the signatures, one now has 1) a Collaborative Family Law Participation Agreement.

By uploading the document with all of the signatures, one now has 2) a memorialized record.

By uploading the document with all of the signatures, one now has a memorialized record 3) signed by all the parties and their respective attorneys. At least one now has version 1.0. If and when additional persons are added to the process, additional addendums can be added as needed.

You cannot have due process integrity without process integrity.

The Supreme Court should automate all processes under Rule 53 from day 1. As automated, the Supreme Court should also provide the appropriate tools to be used by the users. These tools should provide full support for all users of the system under Rule 53. The time is now.

In May 2016, the RAND Corporation released the report "Fostering Innovation in the U.S. Court System; Identifying High-Priority Technology and Other Needs for Improving Court Operations and Outcomes." The report presents the results of the Courts Advisory Panel, a group convened in fiscal year 2015 as part of the NLECTC Priority Criminal Justice Needs Initiative to identify current challenges and innovation needs in the U.S. court system. The goal of this project was to develop an *innovation agenda*—that is, to identify changes in technology, policy, and practice that could address problems faced by courts today or enable them to improve their efficiency and effectiveness going forward. The Courts Advisory Panel was made up of judges, prosecutors, defense counsel, and court administrators from around the country and included Mr. Rob Gowen, an attorney from Tennessee. The judge, attorney, and court administrator working groups together identified more than 130 needs. Just over 60% of needs contributed to saving money and time followed closely by ensuring due process. The high-priority needs were dominated by information and communications issues (including not just information technology but the application of data collection, analysis, and other tools). (The RAND Report)

There is no question that the Supreme Court has spent the last 12-18 months addressing, whether by chance or by design, much of the "low hanging fruit" identified within this report. There have been noticeable improvements to the presentation of content on the various court system web sites. And the Supreme Court has laudably added content that is clearly designed to improve process efficiency; the addition of standardized forms is one example of that effort. And now it could appear that the court is approaching the point of diminishing returns on the "application" curve and may be making an attempt to "clean up the books". The thinking may go that if there is less process to manage, it is easier to automate the management of that process.

Garbage In, Garbage Out

The Supreme Court should provide the appropriate tools used to manage the credentialing of any user role under the Rule 53 process. This would include determining the minimum credentials, by role, of the potential user.

As stated in the RAND Report, "Society relies on the judicial system to play numerous roles. It is the link between law enforcement and the corrections system and serves as a check on their power over citizens. The justice system adjudicates disputes, serving as a venue for negotiation and resolution of various issues, from defining the details of a contract that might affect only a handful of people to establishing and compensating harms affecting thousands or even millions of individuals."

In my humble opinion, the judicial system should also be the link between the Collaborative Law Process (Family or Otherwise) and the (Rule 53) Mental Health System and serve as a check on its power over citizens too. The statistics are staggering and are generally as follows: There are over 1 million divorces annually in the United States; Approximately 1 in 2 marriages end in divorce; Approximately 6 in 10 divorces involve minor children; Approximately 2 in 5 children experience divorce prior to the age of 18.

Turning again to Rule 31 for comparison, one finds the following sections:

> Section 4. Selection of Neutrals The Administrative Office of the Courts maintains a website with a list of Rule 31 Mediators.

Section 17. Rule 31 Mediators have minimum license and practical work experience requirements. A possible requirement for Family Cases is that one must be a CPA, have a graduate degree, or a baccalaureate with 10 years of experience.

Section 18. Additional Obligations of Rule 31 Mediators include the prompt reporting of any licensing issues within 14 days; with action by the ADRC within 30 days; with mandatory ADRC disciplinary proceedings if the licensing agency finds the Rule 31 Mediator guilty of misconduct. Even if the licensing agency rescinds such an order, the individual need reapply again to be listed. Rule 31 requires an annual renewal of status and data submission as required by the ADRC.

APPENDIX A. Standards of Professional Conduct for Rule 31 Neutrals Persons serving as Neutrals are responsible to the parties, the public, and the courts to conduct themselves in a manner which will merit that confidence.

Section 6. Impartiality - A Neutral must disclose any pecuniary interest, close personal relationships or other circumstances which might reasonably raise a question of impartiality. The burden of disclosure rests on the Mediator. A Neutral shall not use the dispute resolution process to solicit, encourage, or otherwise incur future professional services with either party.

The Supreme Court of Tennessee has an opportunity to provide clear guidelines of oversight for Rule 53 experts, as well as implement a program of quality control that limits the damage caused by unscrupulous experts. While it is appreciated that the Supreme Court has traditionally allowed the trial court judges the ability to determine the usefulness of any given expert, the Supreme Court should seriously consider if now is not the appropriate time to put some limitations in place, for the good of the entire judicial system. The ability to provide expert guidance and / or testimony should not be an unlimited right. The Supreme Court should have the ability to "black list" an expert, or at the minimum, enact a program of review under which all court experts of a given "role" are allowed to self-police in a single blind fashion with the appropriate Tennessee Board providing oversight. ***And automated correctly, decisions should be able to propagate across the system instantaneously.***

Consider a scenario in which a Rule 53 expert recommends a custody situation that returns a child to a parent, under sole custody, who is then indicted for 5 counts of child rape against that child? How many times should the Tennessee Supreme Court allow that to occur before the Tennessee Supreme Court (personally) steps in and rescinds that expert's ability to impact the judicial process? What if less than six months later, the Tennessee Supreme Court is informed that the same psychiatrist was a part of a psychiatrist/psychologist research team and the psychologist was sanctioned by the Tennessee Board of Psychological Examiners for a previously undisclosed 10 year history of severe cocaine abuse? Again, at what point is the Tennessee Supreme Court obligated to step in and protect its own judges and attorneys, if not the public, from a subsequent exposure to said expert? Under the current system, the answer is never. Under the proposed Rule 53, such a situation will probably never even come to light.

As restated in a recent Tennessee Appellate Court opinion, Judge Randall Wyatt Jr wrote about one such expert witness when he stated:

> Doctor <<Name>>, a semi-retired forensic and child psychiatrist from <<Name>> University with a degree from <<Name>> Medical School, testified that he had spent 25 years <<activity>>. Doctor <<Name>> stated that he had testified approximately 300 times and that he had been qualified as an expert in child psychiatry "[m]any, many times" in "16 or 17 states" including Tennessee.

> The [c]ourt acknowledges that [Doctor] <<Name>> has an outstanding educational pedigree and has had a long and distinguished career as a psychiatrist. However, the [c]ourt finds that [Doctor] <<Name>> has authored one article on the topic of why children sometimes make false statements regarding abuse, and it was published in 1993 – 22 years ago. Moreover, the [c]ourt finds that the science and methodology behind the conclusions in [Doctor] <<Name>> article, which form the substance of his proposed testimony, is not reliable. [Doctor] <<Name>>selected 13 cases, some from his own practice and some from a literature review of other researchers. There was no sound methodology presented to the [c]ourt as to how these cases were selected. In fact, [Doctor] <<Name>> acknowledged that the determination that the children in the cases he reviewed made false allegations was almost entirely subjective. Additionally, [Doctor] <<Name>> failed to consider cases where children were deemed to have made accurate or truthful allegations to test the application of his theory in that context. As a result, the [c]ourt has no way of knowing an error rate of whether [Doctor] <<Name>>opinions are scientifically sound. The [c]ourt acknowledges that the article was peer-reviewed, as was his "Practice Parameters" article. However, there was minimal evidence that his opinions and conclusions are widely accepted in the scientific community, and peer-review alone do[es] not necessarily make the evidence admissible. The [c]ourt simply does not find the science behind [Doctor] <<Name>> testimony to be reliable enough to permit him to offer the proposed testimony.

The Tennessee Appellate Court then stated:

> Finally, the lack of reliable scientific evidence and methodology behind Doctor <<Name>>conclusions justified the trial court"s determination that the expert opinion would not "substantially assist" the trier of fact. See Tenn. R. Evid. 702, 703.

This ruling came 5 years after the Tennessee Supreme Court could have been and should have been aware that this physician had convinced a trial judge to return a child to a parent currently indicted on 5 counts of child rape and 4 years after this physician's research partner was sanctioned by the Tennessee Board of Psychological Examiners for a 10 year history of cocaine abuse.

It is even more difficult to state that the Mental Health Professional "industry" self corrects. For example, if a psychiatrist enlists with the Tennessee Supreme Court as a Rule 53 expert, then there should be rules in place that mandate that all publications by that psychiatrist are provided to the court to be made available for an appropriate peer – review by the other Rule 53 experts who are psychiatrists, and not just the Mental Health Professional experts at large. The currently posted "Middle Tennessee Collaborative Alliance (MTCA) Membership Requirements (Updated December 2013)" was last modified on 1/27/2014 and states under number 5 that "Members are required to obtain at least three hours of continuing education every year specifically related to collaborative divorce or mediation". However, specific examples of continuing education opportunities that would meet this requirement are:

> *Attending MTCA affiliated meetings such as the meetings held at Marietta Shipley and David McMillan's house*

The Supreme Court should be responsible for the warehousing of the data

The Supreme Court should have responsibility for providing the application framework to support the process of this new rule. The Supreme Court has acknowledged its jurisdictional responsibility by adding a Rule. It cannot now abdicate its moral authority over the process.

The Tennessee Supreme Court should have the "keys" to this kingdom. All process transactions should occur through the application and all quality reporting should occur directly to the Supreme Court Justices for a period of 3-5 years. That way, the actual justices will play a role in determining what "quality" means. This is far easier than you probably realize.

While the participants, through the application, will be responsible for the "material", ***including its input***, the Supreme Court should both provide the tools and harbor the data. The Supreme Court should also "add" to this oversight at least a single outsider. Maybe consider the Chief Justice of the State of New York, if she would be so inclined. Done correctly, Rule 53 should look far more similar to Rule 31 than it currently reads. Any process performed under Rule 53 should be performed on a Tennessee Supreme Court recognized and "managed docket". Binary rules would allow the participants in the process to set the pace, and the Supreme Court, having "ownership" of the application and data would and should monitor the process.

And, and this is a big ***and***, if the process described above for initiating a Collaborative Family Law Agreement is warehoused with the Supreme Court, then so is the process meta data. Done correctly, this is an easy build that the Court could then scale. And talk about real meaningful data.

Every case performed under Rule 53 should be "registered" through the system.

Clearly, no one person would look at 100% of the data. Any one person might view only a tremendously small percentage of the data accessible to them. However, in a well-designed system, a person would be able to view what they wanted when they needed it. It is all about having the right data available now. Anything else can lead to re-work, and pardon my French, but "re-work sucks". If all of the data is warehoused within the system, then:

The Court knows exactly how many cases are occurring at all times.

There is no issue with switching costs for the attorney or client.

All communications could go through the application so that they are available to everyone simultaneously. This includes any court filings.

The Court would have standardized data for research purposes. Done correctly, the Tennessee Supreme Court would be able to help answer policy questions such as "What is the minimum amount of time that a child needs to spend with a parent to avoid being alienated by the other parent?"

The Court could provide, as an actual user interface, the templates for the documents to be used under Rule 53.

Discovery documents could easily be uploaded and managed under the application as well. Access rules by role (view upload and delete abilities) can determine who has access to any given documents at any given time and the Court would have a process by which documents could easily be viewed "in camera". And every action can be logged by user and date time.

The Court would be able to track attorneys and experts as Rule 53 cases moved into litigation.

Any attorney would have access to anyone else's expertize through the system.

If the Supreme Court maintains the data(base), and the process, and the tools, the Supreme Court will be better able to determine what data to capture for analysis.
The users of the system would be able to provide quality review through the system as well.

Clients would be able to provide user feedback for future process users regarding the experts used for their case.

Finally, in no particular order, and due to limited time remaining to respond, the following are quick concerns regarding "statements" as currently proposed by the Rule and the currently published protocols on the MTCA website.

Under the Collaborative Divorce Model, the team includes collaborative lawyers, a financial professional, and a divorce coach for each spouse and a child specialist for the children. One mental health professional will function as a case manager. All of the professionals participate throughout the process. The involvement of the mental health professionals is mandatory from the outset. If the involvement of the Mental Health Professional is mandatory from the outset, how is that factored into the Collaborative Family Law Agreement from the outset?

The mental health professional should assist clients in complying with the requirement to make full and candid exchange of all relevant and requested documents and information. Is the Mental Health Professional soon to be considered "responsible" for the production of documents?

Program evaluator. Many mental health professionals have training in research method and program evaluation. Evaluating the effectiveness of collaborative law practices may broaden practitioners' understanding of effective approaches. Is this not the role of the Court?

Parenting plan evaluator. There may be instances when a collaborative team decides to employ a mental health professional as a neutral expert to conduct a formal evaluation to make recommendations regarding a parenting plan. The decision now belongs to the collaborative team and not the two parties?

Mental health professionals advise participants that their records are comingled and explain procedures for their release consistent with the ethics of their profession and relevant law. How do commingled records impact HIPPA requirements?

The parties shall each sign, under oath, a joint sworn complete statement of assets and liabilities, including contingent assets, and possessory interests, verifying that they have fully disclosed all marital and separate property as well as liabilities including but not limited to contingent assets and contingent liabilities. A jointly retained financial neutral may prepare the sworn statement. The parties shall make available documents to verity their sworn statements. How does a joint sworn statement impact a party's ability to allege "non production" of important documents?

An "allied professional" is an individual engaged as a neutral by the parties to assist in the collaborative process. Financial professionals and mental health professionals are examples of

allied professionals. So is anyone an allied professional as long as the parties, or the collaborative team, agree?

Mental health professionals may withhold certain information given to them by a participant if such disclosure would significantly compromise the emotional well-being of one of the participants, so long as this withholding does not affect the integrity of the collaborative process. Does this supersede a professional's duty to report another professional?

Mental health professionals should provide copies of all written communications to all participants, except when disclosure would be counterproductive to the collaborative process. Who makes this determination and how? Does this mean that one mental health professional would not disclose the cocaine use of another?

A mental health professional cannot become an expert or therapist for one party and continue to be a neutral resource for all the collaborative participants. But a Mental Health Professional could become an expert for one party after being a neutral for both?

The ultimate sanction against a lawyer who uses tactics or trickery to abuse or evade the collaborative law process, or condones or encourages such abuse by the client, is the diminution of that lawyer's reputation. Should it not be the loss of the ability to operate under Rule 53?

I am certainly available to provide further support and greater detail regarding any of my concerns and suggestions herein. My experience is the result of creating a comprehensive management system for medical records and the associated processes and work flows over the past 10 years, by and through which millions of records and data components are organized, including the network on which it operates and the analytics through which it is managed. That includes the interfacing with the various hospital data systems in use and includes paper based processes.

I will leave the Tennessee Supreme Court and the Tennessee Bar Association with this final thought. The goal should be to implement this process to protect the "most innocent" within your ranks. Integrity is not an attribute to overcome, it is a trait to embrace.

Be bold. Be revolutionary. That is my request to the Supreme Court of Tennessee. That is my request to the members of the American Bar Association.

Sincerely,

Harold W. Duke III, MD, MBA, MPH

Venick Kuhn Byassee
Austin & Rosen, PLLC

Irwin B. Venick*
Irwin J. Kuhn*
Jean L. Byassee
Katherine A. Austin
Peter S. Rosen
* Rule31 listed mediator

Writer's email: Kuhn@vkbarlaw.com

November 21, 2017

James M. Hivner, Clerk
Re: Collaborative Family Law
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

VIA EMAIL: appellatecourtclerk@tncourts.gov

RE: Petition to Adopt a New Rule of the Tennessee Supreme Court Concerning the Practice of Collaborative Family Law.

May It Please the Court:

While I was very much involved in the development of the Tennessee Bar Association proposal to adopt the Uniform Collaborative Law Rule as a rule of this Court, I submit the following as a personal statement of an active collaborative family law practitioner.

My practice, as for the past several years, is almost exclusively focused on family law issues. Family law has been a part of my practice since I concluded my clerkship with Justice Harbison on this Court in 1985. Two seminal developments have taken place in that period of time. One is the widespread acceptance and use of mediation as a dispute resolution mechanism, to the point it can no longer be called alternative. The second is the introduction of collaborative family law.

I have represented clients in over 25 collaborative divorce cases since 2010, and one collaborative style prenuptial negotiation. 24 cases ended in divorce through the collaborative process, one ended in reconciliation. I am aware that a small number of those divorce cases resulted in post-divorce disputes. That is no different than cases settled in mediation or tried in court.

Collaborative cases are more efficient than other cases resolved through the traditional litigation/mediation path. While collaborative practice is not as cost efficient

as a couple working out their settlement around a kitchen table, it is far more efficient than lengthy motion practice, traditional discovery, and trial preparation. Kevin Fuller is a top matrimonial lawyer in Dallas, Texas. At a conference on collaborative family law Fuller compared the economic efficiency of collaborative family law to full scale litigation. He stated that in a three year period he participated in 56 collaborative cases and three "go-get-'em" cases. He calculated that the fees from three full scale litigation cases exceeded the fees from all 56 collaborative cases combined.

Efficiency is achieved, in part, through the use of neutral experts, such as financial professionals for valuation and collection of information regarding assets and liabilities. The integrity of the information is assured by the rule's requirement of sworn asset and liability statements.

I urge the Court to adopt the rule for many reasons. Foremost, is putting the Court's imprimatur on this valuable alternative for resolving family law matters in a manner designed to foster the preservation, rather than destruction, of relationships that will continue after marriage whether through children, or friends, or otherwise.

In addition, adoption by this Court of the mandatory withdrawal provision found at proposed Section 4(b)(3) assures the integrity of the process being offered to prospective clients. The mandatory withdrawal provision is a definitional aspect of the collaborative process. Without the withdrawal provision, the economic incentive to seek settlement for both the clients *and* the lawyers is gone. As someone who has participated in "collaborative light" or "cooperative" style cases where there are other attributes of collaborative cases but there is not a withdrawal provision, I can affirm that such a practice is far from collaborative. Not only are the economic incentives missing, the level of trust and focus on interests is missing. My approach to protecting my client is far different when I am concerned that counsel on the other side of the table may one day be cross-examining my client in court. With the withdrawal provision, the family law matter is much more akin to a transaction, without it, the case is litigation.

In addition to adoption of the mandatory withdrawal provision, a rule of this Court establishing a privilege against disclosure of collaborative family law communication (proposed Section 17) assures similar protection of collaborative communication as is available to mediation participants under Rule 31. As well, the privilege covers communication among clients and neutral professionals such as financial planners and mental health professionals.

The provisions of Section 6 of the proposed rule will assure that the collaborative process is given time to work by providing a procedure for parties to be heard before dismissing a case for failure to prosecute. In my experience, collaborative cases have been concluded a timely manner. However, colleagues in other parts of the state have raised concerns about local practice for courts to set cases for trial quickly and without notice. This provision of the proposed rule will put aside some of that concern.

Much has been written about the place of divorce on the spectrum of life's most stressful events. By some accounts it is the exceeded only by the death of as child or a spouse. Likewise, studies show that elevated levels of discord during divorce increase the chances of psychological problems for children such as depression, anxiety, and aggression.

Certainly, collaborative methods, clients working together to craft their own agreements are far less likely to promote alienation, distrust, and bitterness than traditional litigation.

While collaborative may not be the solution for every case, I urge the Court to recognize and regulate the practice of collaborative family law by adopting the rule proposed by the TBA.

Sincerely,

Irwin J. Kuhn

IJK/km

HELEN SFIKAS ROGERS*
LAWRENCE J. KAMM
SIEW-LING SHEA*
GEORGE D. SPANOS
ETHAN R. PAGE
STELLA V. KAMM

*RULE 31 MEDIATOR

ROGERS, KAMM & SHEA

ATTORNEYS AT LAW

(615) 320-0600

PARALEGAL STAFF:
KATHLEEN MARCOTTE
RENEE BROWN
LAURA BLUM
SHEENEAN BEAL

November 21, 2017
Via Email and United States Mail

James M. Hivner, Clerk
Re: Collaborative Family Law
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Re: Collaborative Family Law; No. ADM2017-01195
Solicitation of Written Comments

Dear Mr. Hivner:

We are writing in support of the new Collaborative Family Law. In our experience, this method of resolving family disputes, with the right parties, can be cost effective, efficient, and emotionally satisfying. It is always more satisfying to parties when they are able to reach a resolution tailored to meet their financial and emotional goals. The new law would provide the necessary guidelines for the practice of collaborative divorce and to ensure that the legal rights of the parties are still protected. Our firm has successfully mediated cases and find the results excellent. More guidance and uniformity in this developing area would be welcomed. Standards for training of legal, financial and mental health professionals, and any other professionals who practice this form of resolving family disputes, would help maintain a certain professionalism and lay the foundation for a consistent and experienced approach to the complex issues that may arise in a family law dispute. Where children are involved, a collaborative family law approach encourages communication on matters which affect the children's best interests and preserves relationships for the well-being of our future generation. We whole heartedly support the proposed rule and would urge the adoption of proposed Tennessee Supreme Court Rule 53.

With best wishes, we remain,

Very truly yours,

Helen Sfikas Rogers

Siew Ling Shea

NASHVILLE OFFICE & MAILING ADDRESS
The Wind in the Willows Mansion
2205 STATE STREET
NASHVILLE, TENNESSEE 37203-1850
FAX (615) 320-9933
WWW.HELENROGERSLAW.COM

FRANKLIN OFFICE
317 MAIN STREET SUITE 206
FRANKLIN, TENNESSEE 37064
(615) 224-6421

From: "marietta shipley" <marietta@mariettashipley.com>
To: <lisa.marsh@tncourts.gov>
Date: 11/21/2017 4:18 PM
Subject: TN Courts: Submit Comment on Proposed Rules

Submitted on Tuesday, November 21, 2017 - 5:18pm
Submitted by anonymous user: [108.205.228.69]
Submitted values are:

Your Name: marietta shipley
Your Address: 2809 Wimbledon Road
Your email address: marietta@mariettashipley.com
Your Position or Organization: 2015
Rule Change: Proposed Amendment to add rule addressing Collaborative Family Law
Docket number: - ADMIN2017-01195
Your public comments:
Collaborative Rule Comment by Marietta M. Shipley, Nashville, Tennessee

I write in support of Proposed Rule 53, on the Practice of Collaborative Law in Tennessee. I have been an attorney since 1976, a judge for 16 years , a mediator/arbitrator for 11 years and collaborative attorney for seven years.

In 1996, the Supreme Court passed Rule 31, the first court approved structure for Alternative Dispute Resolution. The Rule provided that upon its own motion or motion of either party, the court could send attorneys and litigants to mediation and other non-binding processes. At the time, there were a few voluntary mediations and mediation programs scattered across the state. Since 1996, over a thousand mediators have been trained in a 40 hour training and become listed by the Supreme Court. Now either by court rule or designation of the judge, litigants mediate just prior to a jury trial or family court proceeding. Rule 31 was based on a study of surrounding states, such as Florida , Texas and North Carolina, where mediation flourished. We are at the same crossroads for family law in 2017. If passed, Tennessee will be the 17th state to adopt a Rule or Uniform Act, while 10 other states practice collaborative law, particularly Family Law.

The Collaborative Law process proceeds at the beginning of a divorce or other family proceeding. Husbands and Wives /fathers and mothers seek out such a process that only involves the Court at the "blessing stage," where court approval is required for a Marital Dissolution Agreement and Parenting Plan. After advice and counsel the parties choose to treat their divorce like a team business proceeding. They employ two collaborative divorce attorneys, generally one neutral financial professional and one mental health professional, acting as a coach/mediator. After a series of face to face meetings, with the various professionals and team meetings, the parties, if successful, enter into an agreement, and submit a Marital Dissolution Agreement and/or Parenting Plan. This process can be used for pro bono cases or cases involving complicated cases for people of means.

The beauty of the collaborative process is that like mediation, the parties concentrate on the future of the family. Although acknowledged, acts of the past, which are the centerpiece of litigated divorces, have little place in the collaborative process. The goal is for the family to come out of the process, not necessarily friends, but co-parents for their children for the

rest of their lives. The parents should be able to go to soccer games, ballet recitals, graduations, weddings, births and other significant events without causing trauma to their children and themselves. In the initial sessions, attorneys and other professionals address the goals of the parents or husband and wife. In almost 100% of cases, parents wish the divorce process to have a limited impact on their children. Although they wish to be financially stable, they do not seek to do harm to the other spouse, no matter how hurt or sad they are over the divorce. Therefore, in this atmosphere, they can make good decisions with the help of the neutral professionals and their collaborative attorneys that will benefit the family as well as themselves.

Does every case end in an agreement ? Not always. After all we have the court to handle litigated cases with no settlement in regular litigated cases. We as collaborative professionals have been handling collaborative cases since 2009, when Collaborative Law was introduced to Tennessee. As the Rule states, attorneys and other professionals must complete a 20 hour training. Those of us who practice collaborative law have been to numerous additional trainings. Although not stated in the rule, most professionals are Rule 31 listed mediators. As we have more cases, we keep learning and perfecting our skills . We learn better how to choose clients who will benefit from collaborative law and be helped by this process. We keep learning how to better work in a team, shedding our natural advocacy bent as attorneys. We all believe strongly in the collaborative process as opposed to the litigation process.

Is this an expensive process? Yes, it can be, but it must be viewed in context. A total collaborative team for a complicated divorce costs about $20,000 or more for a case with four or five team meetings and a full team. The same issues in a litigated divorce would cost upwards of $100,000, with court hearings, formal discovery and depositions, even without a final hearing. The very first collaborative processes in Tennessee had pro bono clients in Linda Seely's legal services cases, so the process may be utilized for a variety of budgets, complexity and emotional conflict.

Is this a safe and fair process? The first rule is transparency. The husband and wife sign a "participation agreement" which outlines their agreement they will not seek a court process, such as the use of motions, answers and counter-complaints, or depositions , while in the collaborative process. Secondly they agree they will disclose all assets, income and debts. The Rule provides that once such assets, etc. are disclosed, both parties sign that list under oath. The parties may, of course, decide to quit collaborative law, but realize their attorney may not be the attorney for a litigated divorce , nor will they be able to subpoena the professionals to court, unless all parties agree.

Is the Court involved in Collaborative Law cases? Unlike mediation, the court or its judicial officers have no role in sending cases to collaborative attorneys. The same approval process is applicable to collaborative cases as well as litigated or non-contested cases. It is an entirely voluntary process. If during the case, there are issues of domestic violence that cannot be resolved by the team, the court becomes involved in Restraining Orders and Orders of Protection and likely the case will be handed over to litigation attorneys.

Why is this Rule valuable and necessary? As with mediation before and

after Rule 31, the dissemination of this rule will give attorneys confidence to start engaging in Collaborative Law , by getting training and founding practice groups in their geographical area as well as educating the public. The most important value of the Rule is the concept that families have an alternative to litigation at the front end of their family matter. Presently contested cases are settled either at mediation at the end of a protracted case or by a judicial settlement officer, shortly before trial. Collaborative Law cases, which are appropriate for the process, start with the modicum of good will and build on that good will throughout the process. Such families can often spend holidays or vacations together or at least have civil discussions on the logistics.

Thus, I wholeheartedly support Collaborative Law and this Collaborative Rule for those families that have an appropriate emotional state, needing no court intervention, and have a track record of transparency in their dealings with the other spouse. I request that the Supreme Court approve Rule 53.

Marietta M. Shipley
The Mediation Group of Tennessee
2809 Wimbledon Road
Nashville, Tennessee 37215
www.mariettashipley,com
marietta@mariettashipley.com
615 292-6069

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

In Re: PETITION TO ADOPT A NEW RULE OF THE TENNESSEE SUPREME COURT CONCERNING THE PRACTICE OF COLLABORATIVE FAMILY LAW

No. ADM2017-01195

COMMENT OF THE NASHVILLE BAR ASSOCIATION TO PETITION TO ADOPT A NEW RULE OF THE TENNESSEE SUPREME COURT CONCERNING THE PRACTICE OF COLLABORATIVE FAMILY LAW

Comes now the Nashville Bar Association, pursuant to Order filed August 22, 2017, and submits the following Comment to Petition to Adopt a New Rule of the Tennessee Supreme Court Concerning the Practice of Collaborative Family Law:

1. The Nashville Bar Association joins the Tennessee Bar Association in recommending adoption of the Uniform Collaborative Law Rule for Family Law as a new rule of the Tennessee Supreme Court (proposed new Rule 53 of the Supreme Court of the state of Tennessee), with consideration of the additional issues set forth below.

2. A significant number of family law attorneys in Nashville and Middle Tennessee have offered collaborative family law services for a number of years with success. Most of those attorneys, but not all, have taken it on themselves to participate in special training in the practice. Most follow the accepted defining characteristics of collaborative family law which primarily include (1) agreement between the parties and counsel to engage in the collaborative process as an alternative to adjudicating the matter through traditional court litigation, (2) the withdrawal of counsel in the event settlement cannot be reached and court

intervention is required, and (3) complete, voluntary disclosure of relevant information that would be gathered in the discovery phase.

3. Adoption of a rule by the court would protect consumers of legal services and protect the integrity of the collaborative process. As the concept of collaborative law becomes more familiar to the public, some may hold themselves out as offering such services without following, or understanding, its features. By adopting the uniformly accepted definition of collaborative family law, as many states have already done, clients seeking the collaborative process would be assured that collaborative family law practice in Tennessee is consistent and in conformity with collaborative family law practice in other states.

4. The Nashville Bar Association requests the Court consider minimum training requirements in collaborative family law for attorneys representing to the public that they offer services in collaborative family law as part of proposed new Rule 53.

5. In addition, the Nashville Bar Association requests the Court consider the addition of language emphasizing that the mandatory withdrawal of counsel provision contained in the collaborative family law participation agreement may not be contractually waived by the parties and their counsel if the collaborative family law process is not successful.

6. While collaborative family law, like mediation and traditional litigation, is not a perfect solution for every client, it is a method of case resolution that should be available on a voluntary basis with a uniformly accepted definition. The Nashville Bar Association encourages adoption of the Tennessee Bar Association's proposed new Tennessee

Supreme Court rule regarding collaborative family law, with consideration of the additional comments herein.

Respectfully Submitted,

Nathan H. Ridley, BPR #006688
President, Nashville Bar Association

Bradley Arant Boult Cummings LLP
1600 Division Street
Nashville, Tennessee 37203
(615) 244-2582
nridley@bradley.com

Lela Hollabaugh, BPR #014894
General Counsel, Nashville Bar Association

Bradley Arant Boult Cummings LLP
1600 Division Street
Nashville, Tennessee 37203
(615) 244-2582
lhollabaugh@bradley.com

Certificate of Service

I certify that the foregoing has been mailed by regular, first-class, U.S. mail, postage prepaid on the 21st date of November, 2017 to the following:

James M. Hivner, Clerk
Re: Collaborative Family Law
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Monica W. Mackie
Executive Director
Nashville Bar Association
150 4th Ave N, Suite 1050
Nashville, TN 37219

Nathan H. Ridley

NATHAN H. RIDLEY, BPR #006688
President, Nashville Bar Association

Lela Hollabaugh

LELA HOLLABAUGH, BPR #014894
General Counsel, Nashville Bar Association

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

In Re: PETITION TO ADOPT A NEW RULE OF THE TENNESSEE SUPREME COURT CONCERNING THE PRACTICE OF COLLABORATIVE FAMILY LAW

No. ADM2017-01195

COMMENT

Comes now Attorney Caroline G. Beauchamp, as the President of the Board of the Middle Tennessee Collaborative Alliance ("MTCA"), and submits the following Comment in support of the Tennessee Bar Association's Petition to Adopt a New Rule of the Tennessee Supreme Court Concerning the Practice of Collaborative Family Law:

The MTCA was formed in 2010 by a group of attorneys, mental health practitioners, and financial professionals who were interested in promoting the collaborative process as a form of alternative dispute resolution in the Middle Tennessee area. At this time, members of the MTCA include seventeen attorneys, nine mental health professionals, and four financial neutrals. Members are required to attend a fourteen-hour training in the collaborative process as well as in interest-based negotiation training, such as mediation.

We attend monthly membership meetings, which include discussions about best practices, and participate in continuing education. Many of the members of the organization are also members of the International Academy of Collaborative Professionals and have attended that organization's annual conference. In the last eight years, more than one hundred divorce cases have been successfully resolved in Middle

Tennessee by members of the MTCA utilizing the collaborative process. In a recent survey of our members, 93% of cases attempted in the process were resolved successfully within the process.

Although no process is perfect or even ideal for every case, the collaborative process provides a framework to enable those divorcing individuals who desire to engage in a process marked by civility to do so. While divorce most often includes at least some conflict between the parties, the collaborative process addresses the conflict head-on in a respectful and grounded way with an eye toward meeting both parties' needs. The process provides privacy for those individuals who wish to avoid having sensitive personal information in the public record. Further, within the confines of the law and subject to Court approval, the collaborative process enables the parties to have a say in the outcome of their divorce case and provides a forum within which creative solutions to difficult issues may be generated.

The facts of the case, client preference, and attorney experience all inform the decisions around the best and most efficient configuration of professionals to support the family. In my experience, many parties, in litigation and alternative dispute resolution processes, prefer to engage in an informal discovery process rather than full written discovery and depositions. The collaborative process provides efficiencies to those individuals desiring to avoid the emotional and financial cost of full written discovery and depositions. Specifically, the engagement of a neutral financial professional enables the gathering of relevant information by one individual rather than by two attorneys. Because the collaborative process requires full disclosure of relevant

financial information that is verified by a credentialed financial expert, reviewed by both attorneys, and culminates in the execution of a sworn statement of assets and liabilities, it provides as thorough information as any other informal discovery process, and often more.

Engaging a mental health professional, with experience and training in facilitating decision-making under difficult circumstances, helps individuals successfully participate in productive discussions, even when emotions run high. The mental health professionals aid clients in prioritizing their goals and make the process it more efficient and more likely to result in mutually beneficial and durable agreements.

The collaborative process is not for everyone, but, for those individuals who have the capacity to provide information and negotiate in good faith and who seek to maintain a cordial relationship post divorce, this process provides significant chances of success. Again and again, I, personally, have seen parents leave the process better able to communicate and co-parent than they were when the process began.

I respectfully request that this Court adopt proposed Rule 53 of the Tennessee Supreme Court, as I strongly believe that it will encourage and support the future growth of the collaborative process in our state by creating minimum standards for practitioners to follow and consistency for consumers.

Respectfully submitted,

McCarter & Beauchamp, PLLC

Caroline G. Beauchamp (#23645)
5110 Maryland Way, Suite 290
Brentwood, TN 37027
(615) 219-0000
President, Middle Tennessee Collaborative Alliance

James M. Hivner, Clerk
Re: Collaborative Family Law
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Re: **In re: Petition to Adopt a New Rule of the Tennessee Supreme Court Concerning the Practice of Collaborative Family Law**
No. ADM2017-01195

Dear Mr. Hivner:

As a member of the Board of the Middle Tennessee Collaborative Alliance ("MTCA"), I am writing to support the Petition to Adopt a New Rule of the Tennessee Supreme Court Concerning the Practice of Collaborative Family Law. I am a mental health professional that believes this practice enables couples to write the narrative of how their relationship will work going forward as separate entities.

The Collaborative Divorce process gives couples a chance to make fully informed decisions together in real time. They each get a voice in the room while being guided by their attorney and informed by the financial neutral. As the mental health coach, I get to help them navigate difficult conversations and the emotions that arise as they undo what was supposed to be a permanent bond.

Many couples walk away with stronger conflict resolution skills enabling them to co-parent better than before. It is often noted in the therapy industry, that it is not the divorce that harms the child as much as it is the level of conflict that the child witnesses. When children see their parents handle conflict in a healthy way, they learn skills to do likewise.

While there is no divorce process that is perfect, I believe the collaborative process empowers clients to be more engaged in how their marriage ends and what their future holds. That is why I support this new rule and hope it sets the stage for creating minimum standards for practitioners to follow and consistency for consumers.

I respectfully request that this Court adopt proposed Rule 53 of the Tennessee Supreme Court.

Sincerely yours,

Jenny Emerson, LMFT
Secretary, Middle Tennessee Collaborative Alliance

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

In Re: PETITION TO ADOPT A NEW RULE OF THE TENNESSEE SUPREME COURT CONCERNING THE PRACTICE OF COLLABORATIVE FAMILY LAW

No. ADM2017-01195

COMMENT

Comes now Julia A. McAninch, Psy.D., Licensed Psychologist, pursuant to Order filed August 22, 2017, and submits the following Comment in support of the Tennessee Bar Association's Petition to Adopt a New Rule of the Tennessee Supreme Court Concerning the Practice of Collaborative Family Law:

1. I have been licensed as a Psychologist in Tennessee since 2007, have been a Rule 31 Listed Family Mediator since 2014 and focus a substantial portion of my practice as a Mental Health Professional on supporting clients, families, attorneys, and other divorce professionals through the divorce process.

2. I was trained as a Collaborative Divorce Coach in 2009, was a Founding Board Member of the Middle Tennessee Collaborative Alliance, am a Past Vice-President and Past President of the organization having served eight consecutive years on the Board. I have been an active member of the International Academy of Collaborative Professionals (IACP) since 2010, having attended the organization's annual conference six times, and having presented workshops at the conference four times. I am a graduate of their Inaugural Leadership Academy and am recognized as a Collaborative

Divorce trainer by the IACP and have co-led Collaborative Divorce training workshops to hundreds of participants around the country since 2015.

3. I am one of the first Collaborative Divorce Coaches in Tennessee and have trained other Collaborative Divorce Coaches in the state and other areas of the country. During the eight years in which I have served as a Collaborative Divorce Coach, I have been involved in approximately seventy (70) Collaborative Divorce cases. Of those seventy cases, all but approximately five cases either settled using the Collaborative Divorce process or are still pending and are expected to be resolved within the process.

4. Collaborative Divorce acknowledges that divorce is a significant life event during which clients must make many decisions about legal, emotional, and financial issues. Divorce is one of the major life events that leads to stress, maladjustment, and at times even crises for individuals and families. The support of collaboratively trained financial and mental health professionals as neutral experts to educate and assist the clients with a more holistic approach to their divorce increases the likelihood that clients will respectfully achieve a mutually-acceptable durable agreement for themselves and their families.

5. As a Collaborative Divorce Coach and Licensed Mental Health Professional, I have found that clients who choose a Collaborative Divorce process experience greater emotional and communication support that aids them in reducing conflict and reaching a mutually-acceptable durable agreement. Per research on the impact of divorce on children, when co-parents are able to reduce exposing their children to conflict, their children have a greater chance of being well adjusted and it reduces the potential negative impacts of divorce. By having a Collaborative Divorce Coach who is a Licensed Mental Health Professional trained in child development and family systems, it provides the co-parents access to information to make well informed decisions to support their children during and

after the divorce. Having a Neutral Collaborative Financial Professional provides the clients with a more sophisticated understanding of the financial matters through financial education and creative problem solving for the family and helps the clients reach mutually acceptable durable agreements, which further decreases the potential for post-divorce conflicts. Collaborative Divorce is a voluntary process in which clients receive assistance with the financial and emotional concerns that arise in divorce in the nuanced way trained, neutral experts can achieve, while still receiving needed legal representation.

6. I recognize that the proposed Rule addresses only the role of the attorneys. In my experience, clients choosing Collaborative Divorce almost always include neutral financial and mental health professionals in their process. Because effective use of neutral collaboratively trained financial and mental health experts is critical to the underlying premise that Collaborative Divorce addresses the legal, emotional, and financial elements of divorce, I respectfully ask that the Court consider including language to address the use of such professionals in the Collaborative Divorce process.

7. The proposed Rule does not address any education or training minimum or continuing education requirements. While training cannot assure the quality of service clients will receive, the average consumer may reasonably assume that a professional who lists Collaborative Family Law on their website or professes to practice the same has been trained to do so. I respectfully ask the Court to consider the addition of minimum and continuing education requirements for all Collaborative Family Law professionals, attorneys and non-attorneys, as necessary for the reasonable protection of the consumer in a similar manner to the applicability of Rule 31 to professionals who serve as Rule 31 Mediators.

8. The Tennessee Supreme Court's adoption of proposed Rule 53 would provide an additional structured and sanctioned process for Tennessee families who want a less adversarial, more supportive approach to navigating the difficult experience of divorce.

7. I respectfully ask this Court to adopt proposed new Tennessee Supreme Court Rule 53, officially recognizing the Collaborative Process as a viable option for families to resolve their disputes in Tennessee.

Respectfully Submitted,

Julia A. McAninch, Psy.D. (TN#2761)
McAninch Psychological & Consulting Services, PLLC
1105 17th Ave. South
Nashville, TN 37212
615-400-2601
Julia@mcaninchpsychological.com

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

In Re: PETITION TO ADOPT A NEW RULE OF THE TENNESSEE SUPREME COURT CONCERNING THE PRACTICE OF COLLABORATIVE FAMILY LAW

No. ADM2017-01195

COMMENT

Comes now Cheryl Panther, Certified Public Accountant, pursuant to Order filed August 22, 2017, and submits the following Comment in support of the Tennessee Bar Association's Petition to Adopt a New Rule of the Tennessee Supreme Court Concerning the Practice of Collaborative Family Law:

1. I have been licensed as a Certified Public Accountant (CPA) in Tennessee since 1990, have been a Rule 31 Listed Family Mediator since 2016 (trained in 2013), and have devoted the majority of my practice as a CPA/financial planner to services for clients and attorneys in family law matters since 2011. While I have served as a consulting and testifying expert in family law litigation and have served as a mediator in family law matters, participation in Collaborative Family Law matters as a Neutral Collaborative Financial Professional has been a focus of my practice since early 2014.

2. I received my initial training as a Collaborative Financial Professional in 2013 at the International Academy of Collaborative Professionals headquarters in Phoenix, Arizona. Since then, I have participated in two additional multi-day collaborative trainings sponsored by the Middle Tennessee Collaborative Alliance (MTCA). I have served on the board of directors for MTCA since 2014, and will serve as MTCA's president-elect in 2018. I have been actively involved with the International Academy of Collaborative Professionals (IACP) since 2015, attending the organization's annual conference three

times, and presenting a workshop at the October 2017 conference. I am recognized as a Collaborative Divorce trainer by the IACP and have co-led Collaborative Divorce training workshops.

3. During the four years in which I have served as a Neutral Collaborative Financial Professional, I have been involved in approximately forty (40) Collaborative Divorce cases. Of those forty cases, all but two cases either settled using the Collaborative Divorce process or are still pending and are expected to be resolved within the process.

4. Collaborative Divorce acknowledges that divorce is a significant life event during which clients must make many decisions about legal, emotional, and financial issues. The support of collaboratively trained financial and mental health professionals as neutral experts to educate and assist the clients with a more holistic approach to their divorce increases the likelihood that clients will respectfully achieve a mutually-acceptable, durable agreement for themselves and their families. As a Neutral Collaborative Financial Professional, I have found that clients who choose a Collaborative Divorce process experience greater understanding of their financial affairs and are able to make well-informed decisions that minimize financial stress for the family system post-divorce. For clients who have children together, the involvement of a Neutral Mental Health Professional benefits their ability to effectively co-parent their children post-divorce, as well as helping them navigate conflict during the divorce in a respectful and non-adversarial manner. Collaborative Divorce is a voluntary process in which clients receive assistance with the financial and emotional concerns that arise in divorce in the nuanced way trained, neutral experts can achieve, while still receiving needed legal representation.

5. I recognize that the proposed Rule addresses only the role of the attorneys. In my experience, clients choosing Collaborative Divorce almost always include neutral financial and mental health professionals in their process. Because effective use of neutral collaboratively trained financial and mental health experts is critical to the underlying premise that Collaborative Divorce addresses the legal,

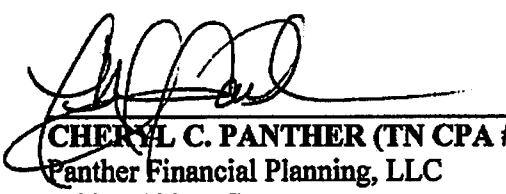
emotional, and financial elements of divorce, I respectfully ask that the Court consider including language to address the use of such professionals in the Collaborative Divorce process in a similar manner to the applicability of Rule 31 to non-attorney professionals who serve as Rule 31 mediators.

6. The proposed Rule does not address any education or training minimum or continuing requirements. While training cannot assure the quality of service clients will receive, the average consumer may reasonably assume that a professional who lists Collaborative Family Law on their website or professes to practice the same has been trained to do so. I respectfully ask the Court to consider the addition of minimum and continuing education requirements for all Collaborative Family Law professionals, attorneys and non-attorneys, as necessary for the reasonable protection of the consumer.

7. The Tennessee Supreme Court's adoption of proposed Rule 53 would provide an additional structured and sanctioned process for Tennessee families who want a less adversarial, more supportive approach to navigating the difficult experience of divorce.

7. I respectfully ask this Court to adopt proposed new Tennessee Supreme Court Rule 53, officially recognizing the Collaborative Process as a viable option for families to resolve their disputes in Tennessee.

Respectfully Submitted,



CHERYL C. PANTHER (TN CPA #11605)
Panther Financial Planning, LLC
1 Glen Abbey Court
Nashville, TN 37215
615-507-2093
cpanther@pantherfinancialplanning.com

Knoxville Bar Association
505 Main Street, Suite 50
P.O. Box 2027
Knoxville, TN 37901-2027
PH: (865) 522-6522
FAX: (865) 523-5662
www.knoxbar.org

November 17, 2017

VIA E-MAIL: appellatecourtclerk@tncourts.gov

James Hivner, Clerk of Appellate Courts
Tennessee Supreme Court
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

Re: Petition to Adopt a New Rule of the Tennessee Supreme Court Concerning the Practice of Collaborative Family Law
No. ADM2017-01195

Dear Mr. Hivner:

Pursuant to the Tennessee Supreme Court's Order referenced above, the Knoxville Bar Association ("KBA") Professionalism Committee ("Committee") has carefully considered the new rule which would address the practice of "Collaborative Family Law." At the KBA Board of Governors' (the "Board") meeting held on October 18, 2017, the Committee presented a detailed report of its review of the Petition. The Committee solicited input from members of the judiciary, representatives of the Family Law Section and the leadership of the East Tennessee Collaborative Alliance. Following the Committee's presentation and thorough discussion by the Board, the Board as a whole unanimously adopted the Committee's recommendation to file this comment in support of the Petition.

As always, the KBA appreciates the opportunity to comment on proposed Rules and changes to such Rules promulgated by the Tennessee Supreme Court.

Sincerely,

Amanda M. Busby

Amanda M. Busby, President
Knoxville Bar Association

Enclosures
cc: Marsha Watson, KBA Executive Director (via e-mail)
KBA Executive Committee (via e-mail)

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

In Re: PETITION TO ADOPT A NEW RULE OF THE TENNESSEE SUPREME COURT CONCERNING THE PRACTICE OF COLLABORATIVE FAMILY LAW

No. ADM2017-01195

COMMENT

Comes now Attorney Benjamin Papa, pursuant to Order filed August 22, 2017, and submits the following Comment in support of the Tennessee Bar Association's Petition to Adopt a New Rule of the Tennessee Supreme Court Concerning the Practice of Collaborative Family Law:

1. I have been licensed to practice law in Tennessee since 2000, have been a Rule 31 Listed Family Mediator since 2003, and have been in full time private practice, exclusively in the area of family law, since 2006. I am a member of the Tennessee Bar Association and Nashville Bar Association and join those organizations in recommending adoption of the Uniform Collaborative Law Rule for Family Law as a new Rule of the Tennessee Supreme Court (proposed new Rule 53 of the Supreme Court of the state of Tennessee).

2. I was trained as a Collaborative Divorce attorney in 2009, was the Founding President of the Middle Tennessee Collaborative Alliance, and have served on the organization's Board of Directors for three terms. I have been an active member of the International Academy of Collaborative Professionals (IACP) since 2009, having attended the organization's annual conference eight times, and having presented workshops at the conference twice. I am recognized as a Collaborative Divorce trainer by the

IACP and have co-led Collaborative Divorce training workshops to hundreds of participants around the country since 2015.

3. In my own private practice, I have been involved in approximately seventy-five (75) Collaborative Divorce cases to date. Of those seventy-five cases, all but five cases either settled using the Collaborative Divorce process or are still pending and are expected to be resolved within the process. Of the five that did not settle in the process, four settled out of court otherwise. The fifth is still pending and its status is not clear.

4. The philosophical premise behind Collaborative Divorce is that divorce is a major life event (or crisis) that includes legal, emotional, and financial elements, and that most divorce clients are best served if all three facets of the divorce are addressed. In general terms, the process is geared toward clients who have made the difficult decision to divorce, but who wish to move through the process in a respectful way, and in a way that, if they have children together, facilitates their ability to be effective co-parents after the divorce. While I recognize that the proposed Rule speaks only to the role of the attorneys, from a public policy perspective, I would respectfully encourage the Court to consider the niche that this process offers clients who choose to access the process as a more holistic approach to divorce.

5. Collaborative Divorce is distinct from litigation in obvious ways as set forth in the proposed Rule, and distinct from mediation in the sense that clients must be represented by Collaborative Attorneys, whereas clients can choose to use mediation without legal counsel. In addition, neither litigation nor mediation is structured in ways that facilitate the active involvement of a mental health and/or financial professional to help the clients navigate the nearly ubiquitous emotional and financial issues that come up in divorce for which most attorneys lack any real professional expertise.[1] In short,

[1] In my personal practice, clients have chosen to utilize the professional services of either a financial neutral professional or a neutral mental health professional in 95% of my Collaborative Divorce cases to date. In fact, 72% have chosen to hire professionals from all three areas – legal, emotional, and financial.

Collaborative Divorce fills an important gap between clients who need more support and structure than mediation affords, but who are not interested in framing the divorce primarily as an adversarial competition in the ways litigation tends to do.

6. No client can be forced to engage in a Collaborative Divorce. There will always be clients who need or want to resolve their divorce using the traditional litigation process. Having the Tennessee Supreme Court adopt proposed new Rule 53 would provide an additional structured, sanctioned, and supportive process for Tennessee families who are already navigating one of the most stressful experiences that occurs in our culture.

7. I would respectfully ask this Court to adopt proposed new Tennessee Supreme Court Rule 53, officially recognizing the Collaborative Divorce process as a viable option for divorcing families in Tennessee.

Respectfully Submitted,

SENT VIA ELECTRONIC MAIL

BENJAMIN PAPA, #20910
Papa & Roberts, PLLC
1612 Westgate Circle, Suite 220
Brentwood, TN 37027
615-767-5900
bpapa@paparoberts.com

Cabaniss Johnston

CABANISS, JOHNSTON, GARDNER, DUMAS & O'NEAL LLP

Mailing Address:
P.O. Box 830612
Birmingham, Alabama 35283-0612
Telephone: (205) 716-5200
Facsimile: (205) 716-5389
www.cabaniss.com

Renasant Place
2001 Park Place North, Suite 700
Birmingham, Alabama 35203
Melanie Merkle Atha
Direct Line: (205) 716-5212
E-Mail: mma@cabaniss.com

Mobile Office:
Riverview Plaza
63 South Royal Street, Suite 700
Mobile, Alabama 36602
Telephone: (251) 415-7300
Facsimile: (251) 415-7350

October 18, 2017

ADM2017-01195

James M. Hivner, Clerk
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219

Re: In re: Petition to Adopt a New Rule of the Tennessee Supreme Court Concerning the Practice of Collaborative Family Law
No. ADM2017-01195

Dear Mr. Hivner:

I am writing as co-chairman of the American Bar Association Section of Dispute Resolution's Collaborative Law Committee and as President of the Global Collaborative Law Council in support of the Tennessee Bar Association's petition to adopt rules which would govern the practice of Collaborative Law in Tennessee.

I have been practicing collaborative law in Alabama since 2011. Alabama adopted the Uniform Collaborative Law Act effective January 1, 2014, and in 2015, our Supreme Court adopted the privilege rules which govern the practice of collaborative in Alabama. Having practiced both before and after the legislation and rules were promulgated in my home state, I can affirm that the presence of a set of rules governing the practice gives the work the legitimacy and formal structure needed to advance the practice for the benefit of the citizens of my state and the lawyers endeavoring to help them.

I encourage the Supreme Court of Tennessee to adopt rules for this hopeful, creative, voluntary, confidential form of limited scope representation, which will help Tennessee families in legal conflict to find efficient resolution to their disputes.

Thank you for your consideration.

Very truly yours,

Melanie M. Atha

MMA:pkc

Lisa Marsh - Fwd: Collaborative Family Law - No. ADM2017-01195

From: appellatecourtclerk
To: Marsh, Lisa
Date: 10/12/2017 9:00 AM
Subject: Fwd: Collaborative Family Law - No. ADM2017-01195
Attachments: IMAGE.jpeg; HARRY L TINDALL.vcf

>>> Harry L Tindall <Htindall@tindallengland.com> 10/11/2017 11:24 AM >>>

I write to support the proposed court rule in Tennessee Concerning The Practice of Collaborative Family Law. The practice of collaborative law in an entirely voluntary process. No litigant can be required to participate in the process. It is a form of alternative dispute process, that is confidential, all parties are represented by lawyers, and results in a high success rate of settlement and satisfaction with the process. It is particularly suited for family law cases, but has been applied to other civil cases as well. The proposed rules would provide clear rules for the process to guide litigants and lawyers. By legislation or court rule, the Uniform Collaborative Law Act/Rule has been adopted in 17 states. I urge the Supreme Court of Tennessee to adopt the proposed court rule.

By way of disclosure, I was involved in the first enactment of a collaborative law statute in Texas in 2001 as well as the Uniform Collaborative Law Act in Texas in 2011.

Respectfully submitted, Harry L Tindall

HARRY L TINDALL
Tindall England PC

(713) 622-8733 x21 Work
(713) 540-9882 Mobile
htindall@tindallengland.com
1300 Post Oak Blvd Ste 1550
Houston TX 77056-3081
www.tindallengland.com

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: PETITION TO ADOPT A NEW RULE OF THE TENNESSEE SUPREME COURT CONCERNING THE PRACTICE OF COLLABORATIVE FAMILY LAW

No. ADM2017-01195

COMMENT OF THE BOARD OF PROFESSIONAL RESPONSIBILITY TO PETITION TO ADOPT A NEW RULE OF THE TENNESSEE SUPREME COURT CONCERNING THE PRACTICE OF COLLABORATIVE FAMILY LAW

Comes now the Board of Professional Responsibility (the Board), pursuant to Order filed August 22, 2017, and submits the following Comment to Petition to Adopt a New Rule of the Tennessee Supreme Court concerning the Practice of Collaborative Family Law:

1. The Board supports the Tennessee Bar Association's proposed new Tennessee Supreme Court rule regarding collaborative law since it provides a framework for Tennessee attorneys currently practicing collaborative family law.

2. The Board finds collaborative family law to be a type of limited scope practice permitted by Tenn. Sup. Ct. R. 8, RPC 1.2(c) provided that the limitation is reasonable under the circumstances and the client gives informed consent, in writing as required by Section 4 of the proposed new rule.

3. The Board supports Section 13 of the proposed rule which states, "This rule does not affect: (a) Except as provide in Sections 9 and 10, the professional responsibility obligations and standards applicable to a lawyer..."

Accordingly, the Board endorses the proposed collaborative family law rule, but notes that notwithstanding the exceptions in Sections 9 and 10 which must be discussed and agreed to in writing by the client, participating in this type of practice does not alter or diminish an attorney's ethical obligations to clients pursuant to the Rules of Professional Conduct.

RESPECTFULLY SUBMITTED,

MICHAEL U. KING (#020830)
Chairman, Board of Professional Responsibility
of the Supreme Court of Tennessee

King and Thompson, Attorneys at Law
12880 Paris Street
P.O. Box 667
Huntingdon, TN 38344-0667

SANDY GARRETT (#013863)
Chief Disciplinary Counsel,
Board of Professional Responsibility
of the Supreme Court of Tennessee

10 Cadillac Drive, Suite 220
Brentwood, TN 37027

Certificate of Service

I certify that the foregoing has been mailed to Joycelyn Ashanti Stevenson, Esq., Executive Director, Tennessee Bar Association, 221 4th Avenue North, Suite 400, Nashville, Tennessee by U.S. mail, on this the 8 day of Sept, 2017.

By: _____
MICHAEL U. KING (#020830)
Chairman of the Board

By: _____
SANDY L. GARRETT (#013863)
Chief Disciplinary Counsel

appellatecourtclerk - in re: docket number ADM2017-01195

From: John <johnselser@att.net>
To: <appellatecourtclerk@tncourts.gov>
Date: 9/4/2017 11:06 AM
Subject: in re: docket number ADM2017-01195

Comment regarding the proposed Supreme Court Rule on the practice of Collaborative Law: docket number ADM2017-01195

I am an attorney who practiced law for 30 years and ceased practicing law in order to devote myself full time to mediation. If I had learned about Collaborative Law earlier, I might still be practicing law, as I believe it is an excellent option for selected parties seeking a divorce without the polarizing effects of many typical lawyer driven divorces.

I applaud the Supreme Court in proposing these rules to outline and define, by court rule, the collaborative practice of law in Tennessee. Please accept this letter (transmitted via email only) as support for the proposed rule.

Thank you kindly for considering my comments.

Respectfully,
John R. Selser
865-457-4620
johnselser@att.net
311 Nave Street
Clinton, TN 37716

SANTORE & SANTORE
ATTORNEYS AT LAW
121 E. DEPOT ST.
GREENEVILLE, TENNESSEE 37744

SERVING THE PUBLIC AND THE PROFESSION SINCE 1965

FRANCIS X. SANTORE (1931 - 2004)
FRANCIS X. SANTORE, JR.*

P.O. BOX 113
(423) 639-3511
Fax (423) 639-0394

August 22, 2017

ADM2017-01195

Mr. James M. Hivner, Clerk
TENNESSEE SUPREME COURT
401 7th Avenue North, Suite 100
Nashville, TN 37219-1407

IN RE: COLLABORATIVE FAMILY LAW PETITION COMMENTS

SENT VIA EMAIL ONLY—HARD COPY RETAINED—TO appellatecourtclerk@tncourts.gov

Dear Mr. Hivner:

Wow! Yet another way that, respectfully, our Supreme Court is chipping away at the profession of law, as it helps all the farmers and "lawyer haters" (e.g. former court reporter Mae Beavers) in the General Assembly, who gut our noble profession with their votes in the House and Senate, and then go to the latest party thrown for the legislators by their favorite lobbyist of choice, usually the insurance lobby, the manufacturers' lobby, or the health care lobby, where booze and "other pleasures" (if you get my drift) are freely available to our solons. Why our learned Supreme Court has to facilitate this has never been comprehended by my rather small mind here in this small-town hick practice I have in northeast Tennessee. The only thing this does is reduce the 5% of the cases our jurists actually try to 3%: still a "George Jetson"-like occupation.

Soon anyone from any "jake leg" institution who calls themselves a "mediator", "collaborative family lawyer," "collaborative lawyer" (are we now going to have "solicitors" and "barristers"?), "licensed mental health therapist," "CASA worker," and so forth will join the thousands of "poor, destitute, *pro se* litigants" and say: "I can be an attorney, also. I don't have to go through three years of Hell called law school. I don't have to prepare for the worst two days one can ever experience, the Bar Examination. I don't have to do any of this, because I'm a lawyer without portfolio!!!!!!"

I have talked myself blue in the face with multi-page screeds having been sent on numerous occasions to comment on issues that are already *faits accompli.* Since this is one, I am saving my efforts for trying to make money to pay my increasing overhead, in a milieu in which law school graduates, most ill-prepared for the actual practice of law, are being churned out like cockroaches.

Yours very truly,

SANTORE AND SANTORE

Francis X. Santore, Jr.
(Just another put-upon small-town lawyer trying to hold his head above water)