

Office of Lawyers Professional Responsibility
Minnesota Judicial Center
25 Constitution Avenue – Suite 105
St. Paul, Minnesota 55155

March 12, 1997

Laurie Savran, Esq.
Collaborative Law Institute
6160 Summit Drive North
Suite 425
Minneapolis, MN 55430

Re: Advisory Opinion

Dear Ms. Savran:

You have requested a written advisory opinion regarding the application of the Minnesota Rules of Professional Conduct (MRPC) to the collaborative practice of law model. You provided to me a copy of the Collaborative Law Institute Practice Manual (1995). The opinions expressed herein are based on the content of that Manual.

The Manual states that, “Collaborative Law is a way of practicing law whereby the attorneys for both of the parties to a dispute agree to assist in resolving conflict using cooperative strategies rather than adversarial techniques and litigation. Collaborative law is the practice of law through problem-solving negotiations that do not include adversarial techniques or tactics.” It is my understanding that, prior to entering into an attorney-client relationship under the collaborative law model, a client will be informed of the nature and limitations inherent in the model. The materials provided indicate that the client will be advised as to what legal services might normally be required in the client’s situation, which of such services a collaborative lawyer will be providing, which of such services a collaborative lawyer will not be providing, and a listing of the advantages and disadvantages of the proposed limitation of representation. The most significant limitations upon the lawyer’s representation in the collaborative model is an agreement that the lawyer will not, in most cases, utilize the formal discovery process to obtain information from parties to the proceeding and will not, with the exception of finalizing an agreement of the parties, institute court action or appear in court on behalf of a client.

My review of the Manual, specifically Section II, “Collaborative Law Ethical Considerations,” does not reveal any significant source of concern regarding inherent violations of the Minnesota Rules of Professional Conduct (MRPC) in the practice of collaborative law. The materials properly stress that, pursuant to Rule 1.2(b), MRPC, a lawyer may limit the objectives of the representation, but only after the client consents after consultation. Section II, pp. 1-2 provides a helpful outline of the disclosures that should be made to a prospective client in order to obtain an informed consent to the limitation of representation.

A significant limitation of the collaborative system is the agreement not to utilize the formal discovery processes. While this, in many cases, may be beneficial to the client, it

also entails risks that not all information from the opposing party will be forthcoming or accurate. This must be explained to the client in advance and the alternatives completely explained. Similarly, the agreement not to utilize the court's motion procedures for establishment of the various interim obligations and rights of the parties may entail some risk to the client. This, too, should be explained in advance.

The Manual accurately identifies the risks inherent in representing a client in the collaborative process where the client's spouse is unrepresented. Great care must be taken to clarify the nature of the relationship between the attorney and the opposing party so that there is no misunderstanding. It must be made very clear that the attorney does not represent the opposing party and cannot provide that person with legal advice. Along these lines, the use of a Joint Petition as a means of instituting the court process should be done with caution. The Joint Petition should not create the misunderstanding that one attorney represents both parties and should clearly state that that is not the case.

Finally, the subject of withdrawal from the representation appears to be adequately covered by the Manual. It is my opinion that Rule 1.16(b), MRPC, would permit withdrawal from the representation should it appear that a collaborative process would not be appropriate. This would be true only if, at the outset, the client was adequately notified that withdrawal would occur under such circumstances. Additionally, it must be noted that there may be circumstances where, pursuant to Rule 1.16(d), MRPC, immediate withdrawal could not take place. In such circumstances, the collaborative lawyer must understand that they will have to continue with the representation until withdrawal may be effected without prejudicing the client's position.

No opinion is given as to the propriety the sample forms contained in the Manual. Necessarily, individual circumstances must be taken in account when drafting agreements and pleadings.

The facts upon which this opinion is based have been supplied by you and have been set forth above. We are not responsible for the application of this opinion to differing factual situations. The above opinion is the personal opinion of the undersigned. It should not be interpreted as binding the Minnesota Supreme Court, the Lawyers Professional Responsibility Board or the Director's Office in any future disciplinary proceeding arising out of this or any other matter.

Very truly yours,

Office of Lawyers Professional
Responsibility

Laurie Savran, Esq.
_____, 2001

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By _____
Patrick R. Burns
Senior Assistant Director