

**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-lead 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

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Cabaniss Johnston

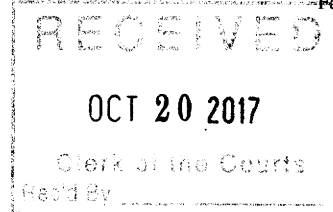
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October 18, 2017



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

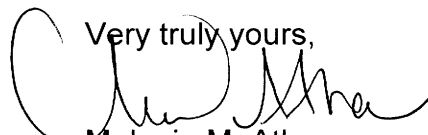
Dear Mr. Hivner:

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.

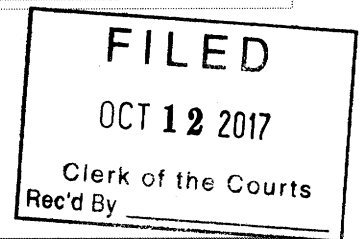
Thank you for your consideration.

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.

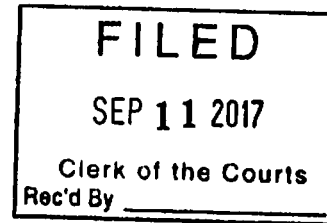
By way of disclosure, I was involved in the first enactment of a collaborative law statute in Texas in 2001 as well as the Uniform Collaborative Law Act in Texas in 2011.

Respectfully submitted, Harry L Tindall

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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**

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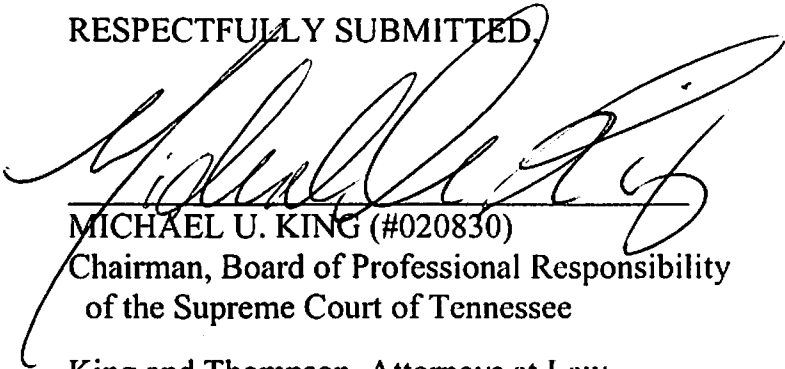
**COMMENT OF THE BOARD OF PROFESSIONAL
RESPONSIBILITY TO PETITION TO ADOPT A NEW RULE OF
THE TENNESSEE SUPREME COURT CONCERNING THE
PRACTICE OF COLLABORATIVE FAMILY LAW**

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.

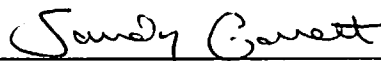
RESPECTFULLY SUBMITTED.



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



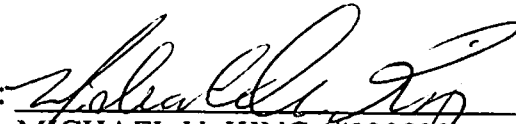
SANDY GARRETT (#013863)

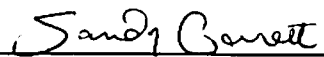
Chief Disciplinary Counsel,
Board of Professional Responsibility
of the Supreme Court of Tennessee

10 Cadillac Drive, Suite 220
Brentwood, TN 37027

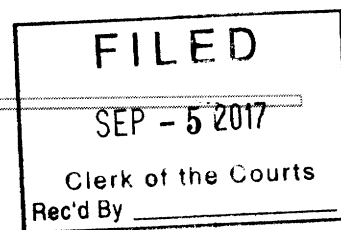
Certificate of Service

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
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Virus-free. www.avast.com

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FILED
AUG 23 2017
Clerk of the Courts
Rec'd By _____

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FRANCIS X. SANTORE, JR.*

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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)