ETHICAL CONSIDERATIONS FOR THE COLLABORATIVE PROCESS

LARRY R. SPAIN
Texas Tech University School of Law
1802 Hartford Avenue
Lubbock, TX 79409-004
(806) 742-4312
(806) 742-4199 FAX
larry.spain@ttu.edu

State Bar of Texas
COLLABORATIVE LAW SPRING CONFERENCE 2008
“Growing Our Collaborative World”
February 28 - 29, 2008
Austin

CHAPTER 5
LARRY R. SPAIN  
Texas Tech University School of Law  
1802 Hartford Avenue  
Lubbock, Texas  79409-0004  
(806) 742-3787 x 227  
(806) 742-4199 FAX  
larry.spain@ttu.edu

BIOGRAPHICAL INFORMATION

EDUCATION

B.A.  Political Science  University of Iowa   1973  
J.D. cum laude Creighton University School of Law  1976

PROFESSIONAL ACTIVITIES

Admitted to practice in Nebraska (inactive), North Dakota and Texas  
Member, Standing Committee on Legal Services to the Poor in Civil Matters, State Bar of Texas  
Member, ABA Section of Legal Education and Admissions to the Bar, Site Evaluation Teams for  
Law School Accreditation  
Past Member, Board of Directors, West Texas Legal Services  
Advisory Board, Lubbock County Dispute Resolution Center  
State Bar of Texas, Pro Bono College 2003- present  
2002 John Crews Pro Bono Lawyer of the Year Award (Lubbock County Bar Association/West Texas Legal  
Services)

ACADEMIC APPOINTMENTS AND RECENT PUBLICATIONS

Professor and Director of Clinical Programs  
Texas Tech University School of Law   2001- present

Professor and Director of Clinical Programs  
University of North Dakota School of Law   1983-2001

Collaborative Law: A Critical Reflection on Whether a Collaborative Orientation Can Be Ethically Incorporated  
Into the Practice of Law, 56 BAYLOR L. REV. 141 (2004).  [Selected Outstanding Texas Law Review Article Award  
for 2005 by the Texas Bar Foundation]

The Unfinished Agenda for Law Schools in Nurturing a Commitment to Pro Bono Legal Services by Law Students.  

Elimination of Marital Fault in Awarding Spousal Support : The Minnesota Experience. 28 WM. MITCHELL L. REV.  

Considerations for Mediation and Alternative Dispute Resolution for North Dakota (with K. Paranica), 77 N.D.L.  

Opportunities and Challenges of Providing Equal Access to Justice in Rural Communities. 28 WM MITCHELL L.  
TABLE OF CONTENTS

I. INTRODUCTION ..................................................................................................................................................... 1

II. SELECTED ETHICAL ISSUES FOR THE COLLABORATIVE LAW PRACTITIONER...................................................... 1
    A. Informed Consent ............................................................................................................................................ 1
    B. Attorney Disqualification and Withdrawal .................................................................................................. 1
    C. Conflicts of Interest ......................................................................................................................................... 2
    D. Disclosure of Confidential Information ....................................................................................................... 2
    E. Competence ..................................................................................................................................................... 2

III. RECENT DEVELOPMENTS AFFECTING THE PRACTICE OF COLLABORATIVE LAW ........................................... 2
    A. Ethical Opinions ............................................................................................................................................. 2
        1. State Ethics Opinions ................................................................................................................................. 2
        2. American Bar Association ........................................................................................................................ 3
    B. Proposed Legislation ....................................................................................................................................... 3
        1. Uniform Collaborative Law Act ................................................................................................................. 3

IV. PRACTICAL SUGGESTIONS TO AVOID ETHICAL DILEMMAS ........................................................................... 3
    A. Appropriate Screening and Assessment ........................................................................................................ 3
    B. Obtain the Client’s Informed Consent to the Process .................................................................................... 3
    C. Utilize a Limited Scope Retainer Agreement ............................................................................................... 4
    D. Preserve Confidential Information ............................................................................................................... 4
    E. Remember to Keep the Client’s Interests Paramount .................................................................................. 4
    F. Training and Continuing Education ............................................................................................................ 4

V. CONCLUSION ....................................................................................................................................................... 4
ETHICAL CONSIDERATIONS FOR THE COLLABORATIVE PROCESS

I. INTRODUCTION

There has been significant commentary written on the theory and practice of collaborative law as well as numerous articles advocating the advantages of utilizing the collaborative law process for a variety of disputes. Unfortunately, there has been significantly less written on the subject of ethical considerations in the use of the collaborative law process.

Understanding how an ethical code largely premised on the adversarial model of practice can accommodate an orientation to practice that diverges significantly from traditional litigation model is a challenge that collaborative practitioners must come to grips with. Fortunately, there has been increased attention to ethical considerations in collaborative practice both by collaborative practitioners and others in a variety of forums in recent years. Continued dialogue on these issues is important to the development of the collaborative law movement.

This brief paper is designed to alert the practitioner to some of the most common ethical issues that may arise in the collaborative law model and offer some guidance to collaborative law practitioners as to how to minimize and avoid ethical dilemmas that may arise in the course of their representation of clients.

II. SELECTED ETHICAL ISSUES FOR THE COLLABORATIVE LAW PRACTITIONER


The most commonly identified ethical concerns for the collaborative law practitioner have related to informed consent, attorney disqualification and withdrawal, conflicts of interest, disclosure of confidential information, and competence. Those ethical concerns may be summarized briefly as follows.

A. Informed Consent

Limited scope representation is clearly permitted under the ethical rules “if the client consents after consultation.” See, e.g. Tex. Disciplinary R. Prof. Conduct Rule 1.02 (b). The question becomes, in the particular circumstances of the collaborative law process, whether the client has given informed consent to the “scope, objectives and general methods of the representation.”

The execution of the Collaborative Law Participation Agreement is, of course, the culmination of securing the client’s consent to the scope of representation. However, everything that occurs between the lawyer and the client prior to the execution of such an agreement is particularly relevant to determining whether informed consent has been given. A detailed discussion and comparison of the material benefits and risks of the collaborative law process to other available alternatives for dispute resolution with the client becomes important in considering whether informed consent has been provided. A lawyer is ethically required to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” Tex. Disciplinary R. Prof. Conduct Rule 1.05 (b).

As will be apparent, many of the most important ethical dilemmas surrounding the collaborative law process revolve around the issue of whether or not the client has given informed consent.

B. Attorney Disqualification and Withdrawal

The essence of the collaborative law process, an agreement among the parties and their attorneys that, if the collaborative process fails and a party decides to proceed to litigation, the attorneys for each of the parties are thereafter disqualified from any further legal proceedings and must withdraw from the case and be replaced by substitute litigation counsel, has raised ethical concerns among many commentators.

The typical concerns expressed are that it may allow one party, acting in bad faith, to intentionally disqualify the attorney for the other party and may also create an undue conflict between the attorney and their client in reaching a settlement. Any withdrawal of representation must, of course, be consistent with the requirements of any relevant ethical rules. See Tex. Disciplinary R. Prof. Conduct Rule 1.15.

A particular concern is whether it is ethically permissible to require a client to give, in advance, a party’s consent to attorney disqualification and withdrawal in accordance with the collaborative law participation agreement, when the withdrawal may not be able to be accomplished “without material adverse effect on the interests of the client”. Tex. Disciplinary R. Prof. Conduct Rule 1.15 (b)(1).

1
C. Conflicts of Interest

The collaborative law process could result in an attorney having an incentive to recommend settlement as a means of avoiding their disqualification and withdrawal and substitution of other counsel, even when the terms of settlement may not be in the best interests of the client. There is always the temptation for lawyers to inappropriately pressure their clients to settle on terms that may not be in their best interest to avoid the attorney having to withdraw from the case and turn the case over to another attorney. On the other hand, similar conflicts involving the attorney’s own personal interests in recommending settlement may arise in a variety of contexts outside the collaborative law process.

D. Disclosure of Confidential Information

Confidentiality is a fundamental principle underlying the attorney-client relationship and a lawyer is not permitted to reveal information relating to the representation except under narrowly defined circumstances. See Tex. Disciplinary R. Prof. Conduct Rule 1.05. The collaborative law process is premised on each party making full and voluntary disclosure of all relevant information which may necessarily raise questions regarding the disclosure of confidential information.

An ethical dilemma for the attorney may arise in deciding whether and to what extent information should be shared in the collaborative law process that ultimately could adversely affect the client’s ability to satisfy their objectives should a settlement not be achieved. Some disclosures may also constitute a waiver of the attorney-client privilege. This may be cured by securing the client’s informed consent which takes account of the risks and benefits of such an approach.

E. Competence

Lawyers offering to represent clients in a collaborative law process should be adequately trained and qualified to undertake the representation, particularly since it represents an orientation which is so different than the adversarial approach that most lawyers have been trained in and indoctrinated with.

A collaborative lawyer, no less than any other lawyer, “shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer’s competence . . .” Tex. Disciplinary R. Prof. Conduct Rule 1.01. As a relatively new practice model, it is important for those offering their services as a collaborative lawyer have a thorough understanding of the fundamentals of the collaborative process as well as the skills necessary to competently represent clients in the process. Without a minimum level of competence, attorneys offering their services to clients as a collaborative lawyer may be ill-equipped to understand the role they play in facilitating settlement and ultimately end up harming the interests of their client.

III. RECENT DEVELOPMENTS AFFECTING THE PRACTICE OF COLLABORATIVE LAW

Several recent developments may offer some clarification on the future resolution of ethical considerations in the practice of collaborative law. While not necessarily resolving completely the ethical challenges for this emerging model of practice, they do suggest ways in which practitioners may avoid ethical dilemmas that might otherwise arise.

A. Ethical Opinions

Several ethical opinions by state bar ethics committees as well as the American Bar Association have offered an analysis of the ethical considerations relevant to collaborative law practice.

1. State Ethics Opinions

Within the past year, an ethics committee of one state bar concluded, for the first time, that the practice of collaborative law was unethical per se. Ethics Comm. of the Colo. Bar Ass’n., Formal Op. 115 Ethical Considerations in the Collaborative and Cooperative Law Contexts (February 24, 2007). [available on Colorado Bar Association website, http://www.cobar.org] The underlying basis of Colorado Ethics Opinion 115 was premised on the idea that the “four way agreement” executed by the respective clients and their lawyers at the outset of the collaborative law process resulted in an insurmountable conflict of interest among the lawyers and parties and accordingly violated Colorado Professional Rule of Conduct 1.7 (b), which bars a lawyer from representing the client if the representation is “materially limited by the lawyer’s responsibilities to another client or to a third person, or by the lawyer’s own interests.” It further concluded that a client’s consent to waive such a conflict could not be validly obtained.

Other states, including Kentucky, New Jersey, North Carolina, Pennsylvania and Washington, have each concluded that the collaborative law process is, in general, consistent with their respective rules of professional conduct.

A. Appropriate Screening and Assessment.

Screening of clients and cases to determine they are suitable and appropriate for the collaborative law process is essential as a first step. A lawyer cannot advise a client to utilize the collaborative law process without a thorough assessment that it is appropriate and in the client’s best interests. Clearly, if a lawyer has a reasonable belief, based on their professional judgment and experience as well as their understanding of the relationship between the parties, that the collaborative law process will likely fail, then recommending the process to a prospective client would be inappropriate.

It is important that a lawyer not “oversell” the collaborative process to a client where it may not be appropriate and must always give a fair and balanced representation of the risks and benefits of utilizing such a process. For example, a prospective client with unrealistic expectations as to the desired outcome or who may not be genuinely motivated to participate in an interest-based problem-solving process to resolve the dispute because their objectives are inconsistent with a collaborative orientation, would not be a suitable client to recommend the collaborative process to. Additionally, if the client is not motivated to participate in the process in good faith but rather to gain some advantage, this should alert the lawyer to decline to represent the client as a collaborative lawyer.

Careful screening at the outset which disclosures the presence of domestic violence may require that a more detailed assessment be undertaken to assess and evaluate whether the client may effectively participate in the collaborative law process or whether additional safety precautions should be undertaken. Understandably, the presence of domestic violence in the relationship may affect the ability of the client to make rational and well-reasoned decisions, including settlement decisions. The presence of domestic violence may also require that professionals involved in the collaborative law process have specialized training in working with domestic violence victims to ensure that their participation and decision-making throughout the process is voluntary.

Likewise, clients with mental health issues or substance abuse addictions may require a more thorough consideration as to whether they may participate effectively in a collaborative process and whether the lawyer is willing to undertake their representation.

B. Obtain the Client’s Informed Consent to the Process.

The unique attributes of the collaborative law process and the differences from the normal undertaking in a lawyer-client relationship creates a heightened duty on the part of the lawyer to explain fully the nature of and limitations on the scope of the
representation that will be provided. Ensuring the client is fully informed of the material risks and benefits, both anticipated and unanticipated, of utilizing the collaborative law process as well as an understanding of its underlying principles and methods will increase the likelihood of the client’s engaged participation in the process and the potential for a successful outcome.

The use of informational materials describing the collaborative law process should be written in a manner that is understandable to the client. Additionally, any written documents utilized for confirming the client’s agreement to use the collaborative process, such as the collaborative law participation agreement, should contain a thorough and complete description of the process to be undertaken that will be acknowledged by the signature of the client. Model disclosure forms provided to clients considering a collaborative law process as well as the use of model collaborative law participation agreements are necessary to ensure fair disclosure and informed consent.

C. Utilize a Limited Scope Retainer Agreement.

It is recommended that a lawyer representing a client in a collaborative law process should use a retainer agreement or engagement letter separate and apart from the collaborative law participation agreement that may more clearly and frankly set forth the limited scope of their representation to be undertaken as well as the specific material risks and benefits of that representation to be acknowledged by the client. Such retainer agreement or engagement letter may, of course, reference the Collaborative Law Participation Agreement that will be executed as part of the process but should be preceded by specific disclosures and an agreement directly with the client.

D. Preserve Confidential Information

The collaborative lawyer should be diligent in protecting the confidences of their client at all times and carefully consider how the client may participate effectively in the collaborative law process without harming their ultimate interests. This requires that the collaborative lawyer not disclose information relating to the representation unless required or permitted to do so under Tex. R. Disciplinary R. Prof. Conduct Rule 1.05. Discussions with the client regarding the potential risks involved in disclosing confidential information are absolutely necessary. This will necessarily require the collaborative lawyer to be well-versed on the their ethical obligations and carefully consider at all times how information is shared in the collaborative process.

E. Remember to Keep the Client’s Interests Paramount

Above all else, a collaborative law practitioner must keep in mind that they represent the client’s interests above all else. While a lawyer practicing collaborative law should share a commitment to the collaborative process for resolving the issues in dispute, they nevertheless must be mindful of the fact that ultimately they represent the client who has retained their services.

F. Training and Continuing Education

A lawyer participating in the collaborative law process should be adequately trained in and committed to the collaborative law process as an appropriate method of dispute resolution. A basic understanding of the process and having the skills necessary for the collaborative law process is essential to promote quality representation of clients in the process.

Consideration might ultimately be given to requiring a minimum level of competency by both training and experience in order for an attorney to hold themselves out as engaged in collaborative representation through either a form of practice specialization or credentialing.

A thorough understanding and commitment to collaborative law practice protocols or guidelines, such as the Protocols of Practice for Collaborative Family Lawyers, adopted by the Collaborative Law Institute of Texas, Inc., or the International Academy of Collaborative Professionals Ethical Standards for Collaborative Practitioners, would represent a good start at understanding, recognizing and incorporating ethical considerations in the practice of collaborative law. Likewise, the development of established procedures to follow and the utilization of tested written documents initiating the collaborative law process would provide a greater assurance of raising the level of practice that is both consistent and of high quality. Practitioners should strive to maintain the highest standards of ethical conduct consistent with the Texas Disciplinary Rules of Professional Conduct.

V. CONCLUSION

Ethical considerations are relevant in the practice of collaborative law and can potentially restrict the growth and widespread acceptance of this model of practice. The collaborative law community should be encouraged to continue to engage in a dialogue on ethical issues and constantly build upon the theory and practice of collaborative law that will directly respond to any ethical considerations raised by the collaborative law model. Continued communication among collaborative law practitioners on ethical considerations is critical to elevating the practice of collaborative law.
It is incumbent among all collaborative law practitioners to be sensitive to the ethical dilemmas that may arise and develop practices and procedures to avoid them, both for the sake of the clients they undertake to represent as well as to promote the further development of collaborative law. Increased attention to the ethical considerations that arise from this model of practice will undoubtedly bring additional clarity and consistency to the process while improving the quality of practice among collaborative law professionals. Collaborative law practitioners are still bound by the rules of professional conduct and must be aware of the ethical considerations that may arise in their practice.
APPENDIX
AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 07-447
Ethical Considerations in Collaborative Law Practice

August 9, 2007

Before representing a client in a collaborative law process, a lawyer must advise the client of the benefits and risks of participation in the process. If the client has given his or her informed consent, the lawyer may represent the client in the collaborative law process. A lawyer who engages in collaborative resolution processes still is bound by the rules of profession conduct, including the duties of competence and diligence.

In this opinion, we analyze the implications of the Model Rules on collaborative law practice. Collaborative law is a type of alternative dispute resolution in which the parties and their lawyers commit to work cooperatively to reach a settlement. It has its roots in mediation and shares many attributes of the mediation process. Participants focus on the interests of both clients, gather sufficient information to ensure that decisions are made with full knowledge, develop a full range of options, and then choose options that best meet the needs of the parties. The parties structure a mutually acceptable written resolution of all issues without court involvement. The product of the process is then submitted to the court as a final decree. The structure creates a problem-solving atmosphere with a focus on interest-based negotiation and client empowerment.

Since its creation in Minnesota in 1990, collaborative practice has spread

1. This opinion is based on the Model Rules of Professional Conduct as amended by the ABA House of Delegates through February 2007. The laws, court rules, regulations, rules of professional conduct, and opinions promulgated in individual jurisdictions are controlling.

2. We do not discuss the ethical considerations that arise in connection with a lawyer's participation in a collaborative law group or organization. See Maryland Bar Ass'n Eth. Op. 2004-23 (2004) (discussing ethical propriety of "collaborative dispute resolution non-profit organization.")


5. The terms "collaborative law," "collaborative process," and "collaborative resolution process" are used interchangeably with "collaborative practice." Although col...
rapidly throughout the United States and into Canada, Australia, and Western Europe. Numerous established collaborative law organizations develop local practice protocols, train practitioners, reach out to the public, and build referral networks. On its website, the International Academy of Collaborative Professionals describes its mission as fostering professional excellence in conflict resolution by protecting the essentials of collaborative practice, expanding collaborative practice worldwide, and providing a central resource for education, networking, and standards of practice.7

Although there are several models of collaborative practice, all of them share the same core elements that are set out in a contract between the client and their lawyers (often referred to as a “four-way” agreement). In that agreement, the parties commit to negotiating a mutually acceptable settlement without court intervention, to engaging in open communication and information sharing, and to creating shared solutions that meet the needs of both clients. To ensure the commitment of the lawyers to the collaborative process, the four-way agreement also includes a requirement that, if the process breaks down, the lawyers will withdraw from representing their respective clients and will not handle any subsequent court proceedings.

Several state bar opinions have analyzed collaborative practice and, with one exception, have concluded that it is not inherently inconsistent with the Model Rules.8 Most authorities treat collaborative law practice as a species of limited scope representation and discuss the duties of lawyers in those situations.
Ethical Considerations for the Collaborative Process

3 Committee on Ethics and Professional Responsibility

...tions, including communication, competence, diligence, and confidentiality. However, even these opinions are guarded, and caution that collaborative practice carries with it a potential for significant ethical difficulties.

As explained herein, we agree that collaborative law practice and the provisions of the four-way agreement represent a permissible limited scope representation under Model Rule 1.2, with the concomitant duties of competence, diligence, and communication. We reject the suggestion that collaborative law practice sets up a non-waivable conflict under Rule 1.7(a)(2).

Rule 1.2(c) permits a lawyer to limit the scope of a representation so long as the limitation is reasonable under the circumstances and the client gives informed consent. Nothing in the Rule or its Comment suggest that limiting a representation to a collaborative effort to reach a settlement is per se unreasonable. On the contrary, Comment [6] provides that “[a] limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client’s objectives.”

Obtaining the client’s informed consent requires that the lawyer communicate adequate information and explanation about the material risks of and reasonably available alternatives to the limited representation. The lawyer must provide adequate information about the rules or contractually terms governing the collaborative process, its advantages and disadvantages, and the alternatives. The lawyer also must assure that the client understands that, if the collaborative law procedure does not result in settlement of the dispute and litigation is the only recourse, the collaborative lawyer must withdraw and the parties must retain new lawyers to prepare the matter for trial. 8

The one opinion that expressed the view that collaborative practice is impermissible did so on the theory that the “four-way agreement” creates a non-waivable conflict of interest under Rule 1.7(a)(2). We disagree with that result because we conclude that it turns on a faulty premise. As we stated earlier, the four-way agreement that is at the heart of collaborative practice includes the premise that both lawyers will withdraw from representing their respective clients if the collaboration fails and that they will not assist their clients in ensuing litigation. We do not disagree with the proposition that this contractual obligation to withdraw creates on the part of each lawyer a “responsibility to a third party” within the meaning of Rule 1.7(a)(2). We do disagree with the view that such a responsibility creates a conflict of interest under that Rule.

8. Supra note 6.
9. Rule 1.0(c).
10. See also Rule 1.4(b), which requires that a lawyer “explain to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”
A conflict exists between a lawyer and her own client under Rule 1.7(a)(2) “if there is a significant risk that the representation [of the client] will be materially limited by the lawyer's responsibilities to ... a third person or by a personal interest of the lawyer.” A self-interest conflict can be resolved if the client gives informed consent, confirmed in writing,10 but a lawyer may not seek the client’s informed consent unless the lawyer “reasonably believes that [she] will be able to provide competent and diligent representation” to the client.11 According to Comment [1] to Rule 1.7, “[t]o[loyalty and independent judgment are essential elements in the lawyer’s relationship to a client.” As explained more fully in Comment [8] to that Rule, “a conflict exists if there is a significant risk that a lawyer’s ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited by the lawyer’s other responsibilities or interests.... The conflict in effect forecloses alternatives that would otherwise be available to the client.”

On the issue of consentability, Rule 1.7 Comment [15] is instructive. It provides that “[c]onsentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation.”

Responsibilities to third parties conflate conflicts with one’s own client only if there is a significant risk that those responsibilities will materially limit the lawyer’s representation of the client. It has been suggested that a lawyer’s agreement to withdraw is essentially an agreement by the lawyer to impair her ability to represent the client.12 We disagree, because we view participation in the collaborative process as a limited scope representation.

When a client has given informed consent to a representation limited to collaborative negotiation toward settlement, the lawyer’s agreement to withdraw if the collaboration fails is not an agreement that impairs her ability to represent the client, but rather is consistent with the client’s limited goals for the representation. A client’s agreement to a limited scope representation does not exempt the lawyer from the duties of competence and diligence, notwithstanding that the contours of the requisite competence and diligence are limited in accordance with the overall scope of the representation. Thus, there is no basis to conclude that the lawyer’s representation of the client will be materially limited by the lawyer’s obligation to withdraw if settlement cannot

10. Rule 1.7(b)(4).
11. Rule 1.7(b)(1).
12. Colorado Bar Ass’n Eth. Op. 115, supra note 7 (practice of collaborative law violates Rule 1.7(b) of Colorado Rules of Professional Conduct insofar as a lawyer participating in the process enters into a contractual agreement with the opposing party requiring the lawyer to withdraw in the event that the process is unsuccessful).
be accomplished. In the absence of a significant risk of such a material limitation, no conflict arises between the lawyer and her client under Rule 1.7(a)(2).
Stated differently, there is no foreclosing of alternatives, i.e., consideration and pursuit of litigation, otherwise available to the client because the client has specifically limited the scope of the lawyer's representation to the collaborative negotiation of a settlement."

16. See Lerner v. Lauer, 819 A.2d 471, 482 (N.J. Super. Ct. App. Div.), cert. denied, 827 A.2d 290 (N.J. 2003) (stating that "the law has never foreclosed the right of competent, informed citizens to resolve their own disputes in whatever way may suit them," court rejected malpractice claims against lawyer who used carefully drafted limited scope retainer agreement), Alaska Bar Ass'n Eth. Op. No. 93-1 (May 25, 1993) (lawyer may ethically limit scope of representation but must notify client clearly of limitations on representation and potential risks client is taking by not having full representation); Arizona State Bar Ass'n Eth. Op. 91-03 (Jan. 15, 1991) (lawyer may agree to represent client on limited basis as long as client consents after consultation and representation is not so limited in scope as to violate ethics rules); Colo. Bar Ass'n Ethics Coun., Formal Op. 101 (Jan. 17, 1998) (noting examples of "commonplace and traditional" arrangements under which clients ask their lawyers "to provide discrete legal services, rather than handle all aspects of the total project").