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*The Center for Alternative Dispute Resolution Newsletter
State of Hawaii, Judiciary*



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Collaborative Law

*- a brief summary for
those who missed the forum*

Pauline Tesler and Peter Sandmann are pioneers in collaborative law (CL), a voluntary alternative dispute resolution process in which lawyers represent clients during out of court settlement negotiations. If the process ends without an agreement, the lawyers are disqualified from representing the parties in court.

CL began January 1, 1990, with Stuart Webb, a family law attorney in Minneapolis. CL spread to California, across the U.S., and is now practiced in 26 countries. CL is most commonly used in family law cases. The attorneys prepare their clients for serious, constructive resolution of issues, assist in identifying common ground, and invite them to engage in a value-centered interaction. The parties maintain control over the outcomes.

Tesler and Sandman explained that people behave differently when they know that the attorneys will not oppose them in court, and that builds trust. That trust, combined with use of interdisciplinary teams, including coaching by mental health professionals and use of a financial neutral, leads to settlement of deep issues for the clients that is not possible in court.

Tesler and Sandman provided advice for beginning a CL practice group in Hawaii. Because family law practitioners often work with each other on a consistent basis, most CL practice groups start there. By training together, meeting regularly, and developing CL materials, attorneys can develop CL skills and trust in each other's commitment to the process. Also, family law attorneys are more likely to represent clients against each other on a consistent basis and can determine if the other attorney will engage in the process productively. If one attorney does not believe the other will work collaboratively, it is best not to use CL.

Hawaii was the fifth state to enact the Uniform Collaborative Law Act. The Uniform Act standardizes many features of CL and creates a privilege for communications during the CL process.