

**Cooperative Practice: A New Technique to Negotiate Cases Successfully**  
**Hamline University School of Law**  
**January 14-15, 2009**  
**Professor John Lande**

**Course Description**

What can you do if you are a lawyer and want to negotiate cooperatively with the other side from the beginning of a dispute? Although lawyers sometimes negotiate at the outset, they often use a litigation-oriented process that is more expensive, time-consuming, and destructive than necessary. Cooperative practice is a recent innovation involving an agreement by both sides structuring a negotiation process to produce early, constructive, and efficient settlements. Because of the similarities between Collaborative and Cooperative practice, this course will be a good introduction to both processes. Based in part on a study of Cooperative lawyers in Wisconsin, this course will explain similarities and differences between Cooperative practice, Collaborative practice, mediation, and traditional litigation-oriented practice - and will analyze when each is appropriate. This course will help students incorporate Cooperative practice in their "ADR toolkits." It will provide practical guidance for assessing cases and using Cooperative negotiation procedures. The course will include presentations, discussions, and role-play exercises.

**Issues Covered**

The course will provide an introduction to the following issues. Please keep them in mind as you do the readings.

What problems is Cooperative practice intended to solve? Why would parties or lawyers feel the need for this additional dispute resolution process?

What is the historical context for the development of Collaborative and Cooperative practice in the legal system, legal profession, and dispute resolution field?

What dispute resolution theory provides the basis for Collaborative and Cooperative practice?

What are the advantages and disadvantages of mediation, Collaborative practice, and Cooperative practice? When is each process particularly appropriate or inappropriate? How should lawyers assess the appropriateness of each process and advise clients considering what process to use?

How should Collaborative and Cooperative processes be structured? What provisions should be included in retainer agreements (between each lawyer and client) and participation agreements (between the parties and, sometimes, the lawyers)?

What are the ethical requirements for Collaborative and Cooperative practice?

What techniques can lawyers use to help parties in Collaborative and Cooperative cases? How can lawyers use interest-based negotiation techniques in these cases – and get “unstuck” when they fall back into unproductive positional negotiation?

Why are there systemic tensions between different elements in the dispute resolution field? What can be done to deal with these tensions constructively?

### **Course Requirements**

1. Completion of all required readings prior to the first class.
2. Regular attendance and constructive participation in class. Comments may be about issues in the readings, class discussion, case simulations, or other relevant matters. Asking questions can be a very good form of participation.
3. Submission of a paper by January 29. The paper must provide your analysis of one or two challenging issues related to the subject matter of the course. An issue is challenging if there is not an easy solution. By definition, if the problem is not easy, there will be at least several plausible resolutions and your paper should identify and analyze the most important ones. Papers will be viewed much more favorably for making a serious effort to grapple with a difficult problem than for providing the “correct” answer to an easy problem. The paper should include your ideas for the best resolution of the problem and address potential criticisms of your position. The discussion must go into some depth on the central issue(s), be as concrete as possible, and not spend much time on material irrelevant to the central issue(s). The papers should be about 12-14 double-spaced pages with normal margins and fonts; they should not be less than 10 nor more than 18 pages. In class, all students will briefly describe the topic of their planned papers and give suggestions about other students’ papers. Students are encouraged to submit papers to the annual Boskey essay contest, which offers a \$1000 prize. For more information about the contest, see <http://www.dsl.psu.edu/academics/boskey.cfm>.

### **Grading**

Grades will be based on:

Class participation	20%
Final paper	80%

Papers will be graded based on quality of analysis as reflected in the insights, persuasiveness, organization, clarity, and thoroughness. **Be sure to edit and proofread your papers.** Editing is often improved if there is a break of at least a day between finishing a draft and editing it. Since it is usually very hard to edit one’s own writing, it can be very helpful to get someone else to read it carefully before you submit it. Soliciting or giving editing advice is permitted in this course as long as the vast majority of the work is done by the student submitting the paper.

## **Required Readings**

I suggest doing the reading in the following order. The initial readings are more theoretical and the later readings are more practical. If you have not yet learned about interest-based negotiation, read ROGER FISHER ET AL. *GETTING TO YES* (2d. ed. 1991). This landmark book is readily available in paperback and is a very quick read.

John Lande, *The Movement Toward Early Case Handling in Courts and Private Dispute Resolution*, 24 OHIO ST. J. DISP. RESOL. (forthcoming 2009).

Ronald J. Gilson & Robert H. Mnookin, *Disputing Through Agents: Cooperation and Conflict Between Lawyers in Litigation*, 94 COLUM. L. REV. 509 (1994).

Ted Schneyer, *The Organized Bar and the Collaborative Law Movement: A Study in Professional Change*, 50 ARIZ. L. REV. 289 (2008).

John Lande, *Developing Better Lawyers and Lawyering Practices: Introduction to the Symposium on Innovative Models of Lawyering*, 2008 J. DISP. RESOL. 1. (This short piece describes articles in a symposium and you may want to read some of the articles of particular interest to you.)

David A. Hoffman, *Collaborative Law and the World of Business*, COLLABORATIVE REV., vol. 6, no. 3 (Winter 2003).

David A. Hoffman, "Open Letter to the Collaborative Practice Community and IACP," [http://www.bostonlawcollaborative.com/documents/Letter to CP Community and IACP.doc](http://www.bostonlawcollaborative.com/documents/Letter_to_CP_Community_and_IACP.doc) (letter dated September 2006).

John Lande, *The Promise and Perils of Collaborative Law*, DISP. RESOL. MAG., Fall 2005, at 29.

John Lande & Gregg Herman, *Fitting the Forum to the Family Fuss: Choosing Mediation, Collaborative Law, or Cooperative Law for Negotiating Divorce Cases*, 42 FAM. CT. REV. 280 (2004).

David A. Hoffman, *Cooperative Negotiation Agreements: Using Contracts to Make a Safe Place for a Difficult Conversation*, in INNOVATIONS IN FAMILY LAW (Kelly Browe Olson & Nancy ver Steegh eds., 2008).

John Lande, *Practical Insights From an Empirical Study of Cooperative Lawyers in Wisconsin*, 2008 J. DISP. RESOL. 203.