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February 2, 2008

The State Bar of California  
Office of the Chief Trial Counsel Intake  
1149 South Hill Street  
Los Angeles, CA 90015-2299

**RE: Rebuttal to Inquiry Number 07-28553 - Attorney Complaint– Ethics Violation  
Complaints against Seltzer/Ms. Tesler**

Superior Court of California, County of Alameda,  
Case Number RF06 287742

Dear State Bar of California:

I received your letter of December 6, 2007 stating a decision to close the complaint referenced above, and this letter is a rebuttal and request for a review of that decision.

Complaint Against Gene Seltzer:

Violating Attorney-Client Privilege: Your decision implies that Mr. Seltzer's violations of attorney client privilege are to be expected because we were in a collaborative law case. You state: "they are congruent with collaborative law." This is an incorrect assumption and a wrong conclusion. Collaborative law (CL) attorneys are at all times required to strictly obey the laws of the state of California and the Ethics Rules of the State Bar (Confidentiality: ABA Rule 1.6(a) of the Model Rules of Professional Conduct) that prevent disclosure of private conversations.

Here I reiterate – Mr. Seltzer breached his fiduciary duty of keeping a client's private conversations with him secret. I had an expectation of privacy, and nothing in collaborative law changes that. When I talked to my lawyer in private, our conversation was protected. My case was damaged by my attorney's breach of confidentiality. He told opposing counsel things I never wanted her to know. I did not sign away my rights when I signed up for collaborative law.

It would be unethical for Mr. Seltzer to have his clients sign away such basic rights as attorney-client confidentiality or violate code(s) of conduct or state law under the veil of a collaborative divorce agreement. While our collaborative law contract only mentions "open and honest" disclosure of information, it does not and cannot supersede attorney-client confidentiality. The openness of a collaborative divorce involves material information relevant to the *settlement*, such as financial disclosures, etc. and discussions at four-way meetings, and "open and honest" are only mentioned in that context in the 2 contracts (STIPULATION ORDER.7, PRINCIPLES & GUIDELINES.2, supplied with complaint). The parties agree to share said information openly and not hide information, but they do not agree to disclosure of every word spoken to their attorneys in confidence! No expectation of such was given or received. Further, the contract stated (PRINCIPLES & GUIDELINES.4) explicitly "As participants in the Collaborative Divorce process, all signatories to these Principles and Guidelines agree to respect the privacy and dignity of all involved, including parties, lawyers, ..."

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Seltzer clearly violated my confidentiality on a number of occasions, and there is ample documentation of that, including an unanswered email asking if he disclosed an initial draft of a letter to the participants that I discussed with him, and a 2<sup>nd</sup> email stating that I assumed he disclosed it, which also went unanswered.

Additionally, when I became aware of Seltzer violating my confidentiality, I marked further communications "CONFIDENTIAL COMMUNICATION" so that he would not reveal them, but this did not serve to prevent disclosures either.

Breach of Contract: There was more than poor legal advice that occurred. Regarding the collaborative process, I very much wanted to go through that process as it was described in documentation and discussions, and as we were all obligated to do under the *written provisions of the agreements* signed by all parties including Mr. Seltzer. It is important to note that such obligations extend beyond basic attorney representation of a client defined by an engagement letter. There were great costs to leaving the process, and it is incorrect to blame me for attempting to stay within the provisions of the agreements and conclude the case. Rather, it was the failure of Mr. Seltzer and Ms. Tesler to follow those written agreements that was very damaging in the case, and deviating from them obligated them to withdraw from the case (PRINCIPLES & GUIDELINES.7). The Stipulation Order filed with the court stated, (STIPULATION ORDER.2): "Each party and each attorney acknowledges that he or she has read and understands the document entitled 'Principles and Guidelines of Collaborative Law,' and agrees to act in good faith to comply with the recommendations set forth in that document." It was a breach of contract (STIPULATION ORDER and PRINCIPLES & GUIDELINES) for Mr. Seltzer to not adhere to the provisions (negotiate in good faith, PRINCIPLES & GUIDELINES.6, abuse of the collaborative process, PRINCIPLES & GUIDELINES.7, client advocacy, PRINCIPLES & GUIDELINES.8). He said on at least two occasions that we must deviate from the process, which is not allowable unless all four parties amend the agreement in writing. Mr. Seltzer changed the process into something that was undefined unilaterally, without explanation, without written amendment, thereby causing confusion and undermining the advocacy of his own client (me) and severely damaging the case.

Regarding failure to communicate, it was also breach of our engagement letter/contract for Mr. Seltzer to ignore communications from me. Mr. Seltzer refused to answer several direct communications from me, as documented in supplied emails.

### Complaint against Pauline Tesler:

Violating Attorney-Client Privilege: As stated above for Mr. Seltzer, a collaborative divorce agreement does not supersede state law and professional codes of conduct regarding attorney-client confidentiality. Ms. Tesler violated attorney-client confidence and revealed information about her conversations with her client throughout the case without her client's permission, and advocated positions that were refuted by her client. Mr. Seltzer told me of conversations between the opposing counsel and her client (my wife) on numerous occasions as reported by Ms. Tesler to him, including the very first conversation they had about the case.

Breach of Contract: On numerous occasions throughout the case, Ms. Tesler breached the STIPULATION ORDER and PRINCIPLES & GUIDELINES written agreements she signed and agreed to follow. This caused extensive damage to my case and made it almost impossible to conclude a settlement in any reasonable fashion. She never suggested jointly amending those contracts in writing as required to make such modifications or changes to their provisions. Rather, Ms. Tesler made up protocols and rules as she went along, further violating the contract provisions and breaching PRINCIPLES & GUIDELINES.7 obligating her to withdraw. On such basic requirements

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as negotiation in good faith (PRINCIPLES & GUIDELINES.7, STIPULATION ORDER.3), not using the threat of court litigation to force settlement (PRINCIPLES & GUIDELINES.6), and not taking advantage of clerical errors (PRINCIPLES & GUIDELINES.4), Ms. Tesler ignored all of them. There is ample documentation of this in the case.

Ms. Tesler, an authority\* on the subject of collaborative law divorce who trains other attorneys, showed flagrant disregard for the principles she teaches. While it may not be an ethics violation for Ms. Tesler to violate her own teachings in a particular case, it is unethical for her to intentionally ignore such teachings and breach the provisions of a written contract to which she is bound, and effectively litigate a case (rather than collaborate) under the veil of those contracts. She was bound by contract, not just to her client, but to Mr. Seltzer and me as well!

Ms. Tesler also breached the contract (PRINCIPLES & GUIDELINES.2, STIPULATION ORDER.7) by not fully reporting my wife's income and (PRINCIPLES & GUIDELINES.7) not withdrawing herself from the case when misrepresentations were made regarding income. The information supplied to us in disclosures was in great variance with income reported in a W-2 statement received after settlement, and there appeared to be selective disclosure during the case.

Ms. Tesler refused to agree to an arbitrator coming in to resolve the biggest issue in the case while her own Client's Handbook shows this to be an acceptable way to resolve just such an issue. Ms. Tesler refused to allow an outside mediator/arbitrator, Mr. Les Morgan with 50 years of experience in the California State Bar enter the case on the grounds that he "is not trained collaboratively", when Ms. Tesler had never met the man (violating PRINCIPLES & GUIDELINES.2). Further, she would only recommend mediators that were in her group of collaborative lawyers which co-markets their services together, which is a conflict of interest and unethical.

By co-marketing services with my attorney, Ms. Tesler, the opposing attorney had conflict of interest in the case and possible financial influence against my attorney.

Ms. Tesler did not represent her client's wishes by making threats of court (violating PRINCIPLES & GUIDELINES.6) and unilaterally inviting me to leave the case (requiring a start over), something that her client desperately wanted to prevent and stated as such on several occasions, and violating the basic provisions that she act as a guide and counsel to her client only (PRINCIPLES & GUIDELINES).

*For the reasons stated above, I therefore rebut the decisions rendered in the Dec 6 letter and request a full review of this complaint and case, and an investigation into the ethics violations described in this letter and my original request and documentation. Thank you.*

Thank you,

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\* "Collaborative Divorce", © 2006 by Pauline Tesler and Peggy Thompson, Regan Books/Harper Collins Publishers, ISBN 10:0-06-088943-8