

I N S I D E T H E M I N D S

Developing a Collaborative Family Law Practice

*Leading Lawyers on Exploring Collaborative Law,
Integrating it into a Practice, and
Implementing Marketing Strategies*



ASPATORE

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Creating a Satisfying and
Fulfilling Career as
a Collaborative Lawyer

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Introduction

In the family context, collaborative law is a process by which trained professionals help divorcing parties to resolve all of the issues involved in the dissolution of their marriage without resorting to judicial intervention. Over the years, many divorcing clients have decided that they do not want to hire aggressive attorneys and spend excessive amounts of money in highly contested cases. Clients are also concerned about their own mental health, their emotional well-being, and the emotional well-being of their children. Over time, people have learned about the detrimental effects of contentious litigation on the parties themselves and on their children. I have seen a dramatic change in the marketplace where the public is now dictating that they want a better way to handle divorce cases. In my jurisdiction, in South Florida, more people are representing themselves or only want one attorney to represent both parties. For example, I recently spoke with a woman who wanted me to represent her in a collaborative case. Her husband is an attorney who did not want to be represented by another attorney because he feels that he is qualified enough regarding the issues at hand to represent himself. Frequently, a sophisticated spouse will urge the unsophisticated spouse not to retain an attorney. Needless to say, that would not be in the unsophisticated spouse's best interest. To avoid such an imbalance of power and to reduce the potential fighting during the process, both parties can retain specially trained collaborative attorneys and negotiate their case collaboratively.

I have been practicing family law since the late 1980s, and over time, I realized that there had to be a better way to resolve divorces. The judicial system is simply not set up to handle family disputes. As a judge in a Canadian case recently wrote, "Paging Dr. Freud. Paging Dr. Freud. This is yet another case that reveals the ineffectiveness of Family Court in a bitter custody/access dispute, where the parties require therapeutic intervention rather than legal attention. Here, a husband and wife have been marinating in a mutual hatred so intense as to surely amount to a personality disorder requiring treatment." *Bruni v. Bruni*, Ontario Superior Court of Justice Family Court, Case No. 2010 ONSC 6568 St. Catharines Court File No.: 384/07 (November 29, 2010).

When you are representing parties in a divorce, you are working with people who at least at one time loved each other and wanted to make lifetime commitments to each other. Suddenly, they resent each other and their relationship has drastically changed. They are still independent adults, so it does not make sense for a third party to decide what will happen in their lives just because they choose not to remain married. The litigation process is not created for resolving family issues and I knew that there must be a better way to help my divorce clients. When I started practicing law, no lawyers took their cases to mediation, but over time, mediation became an acceptable way to resolve the issues involved in a divorce. Now, mediation is mandated in Florida in virtually every case before it can go to trial. In fact, judges will not even schedule a trial until the parties have at least made a good faith effort to mediate their case.

I learned about collaborative family law through another lawyer in Miami. The collaborative process sounded interesting to me, although I was skeptical because of my litigation training and background. I attended a three-hour training, which only gave me a taste of what the collaborative process is about. I accepted that the collaborative process may be a viable alternative to litigation, but I did not understand the philosophy behind the process or how it worked. When I finally attended a multi-day training, I began to truly understand the philosophies of the collaborative process and how attorneys are supposed to speak, act, and treat each other throughout the process. Attorneys interact differently with one another in the litigation process than in the collaborative process. As I describe it, the collaborative process is a higher level of professionalism. In a collaborative case, the attorneys on both sides trust each other because they are trying to achieve the best result for both parties, not just one party. It is essential that they cooperate with each other and refrain from hiding any information. While threats of litigation and taking an issue to a judge is common practice in litigation, there are no threats in the collaborative process. Everyone participates in good faith with the common goal to resolve the case. We use interest-based negotiation skills, rather than goal-based negotiation tactics. There should be no winners or losers in a family case. It should be all about creating the best possible resolution for all parties involved, given the limitations of that particular family's circumstances.

The collaborative process is literally a more enjoyable way to practice law and for someone who is interested in getting into the practice, it should result in much less stress in your life and virtually no receivables in your office, which, for a family practitioner, is a very big change.

Collaborative Law from the Community Perspective

One of the basic tenets of collaborative law is that each party must be represented by their own independent collaborative attorney. It is virtually impossible for two individual attorneys to successfully practice collaborative law without proper education. In fact, a portion of the local legal community really needs to learn about the collaborative process for it to become popular and successful in a community.

Throughout the world, collaborative law is practiced in small groups of professionals, called practice groups. The local practice groups promote standards for training and practice, thereby promoting the standardization of the practice of collaborative law. More experienced attorneys frequently act as mentors to those who are less experienced. While litigators may view other litigators as competitors, collaborative attorneys view other collaborative attorneys as colleagues with common goals. Most often, the collaborative attorneys refer cases to each other, thereby promoting those who dedicate themselves to the collaborative process.

As the attorneys become more involved in the collaborative practice, they learn more and more about specific strategies and the benefits of the process. The attorneys attend trainings and they learn how to handle what is a paradigm shift in their thinking. Those trainings are frequently an opportunity to learn the benefits of involving other professionals in the process, such as mental health professionals and financial professionals, all of whom most likely have greater expertise than do the attorneys in certain relevant areas that affect the divorce case. In some practice groups, these allied professionals are associate or affiliate members of the group. In other groups, they are equal members of the group with the attorneys. I have frequently seen that practice groups start with only attorneys and as they become more sophisticated in the collaborative process, they add the other professionals to their teams.

Finding the Best Community Model for Your Collaborative Practice

Part of the paradigm shift that attorneys must undergo is to learn that we are not the best experts in every field of endeavor. In fact, other professionals have special education and training in areas that affect our divorcing clients. As experienced divorce attorneys know, one of the most significant factors in how a case resolves is the mental health and attitude of the spouses. Clearly, a properly trained mental health professional has much better skills to address those issues than most family attorneys. Similarly, forensic accountants and financial planners are usually better equipped to give financial advice to the clients than are the family attorneys. If we are truly interested in helping our clients and bringing value to their divorce process, we should assist the clients to obtain the highest qualified professionals to help them navigate through their divorce.

After the attorneys, mental health professional, and financial professional team up, there is an issue as to how the community will accept this type of non-traditional, collaborative practice model. There are several different models of collaborative practices throughout the country, but there is no right or wrong answer. In Florida, the trend has been to use one neutral mental health professional and involve that professional from the inception of the case. In Miami, we try to have the mental health professional meet with the parties before there is a first joint meeting and before the case officially becomes collaborative. The mental health professional can then go through the process and meet the clients by getting involved as much as necessary. We then involve the financial professional when appropriate. The general model in Florida is to use the mental health professional as a neutral for both parties, but in some communities, they use separate mental health professionals for each party to help each individual move through the process. If necessary, they bring in a mediator to help the parties negotiate certain issues. The growth in the collaborative practice group in Miami has been similar to the growth in many other communities.

In other communities such as Atlanta, each party has his or her own coach. This coach is a mental health professional and when children are involved, they use a child specialist. They use a mediator as the neutral third party

who will help the parties and the professionals throughout the collaborative process.

Depending on your point of view, some communities are ahead of others in terms of creating an accepted and successful collaborative practice, but one of the interesting things about the collaborative movement is that it is always developing. Nobody is overly concerned that collaborative law must be done in a certain way, so attorneys can feel free to continue to develop their skills and strategies as time goes on. However, the one rule of collaborative law that must always be followed is that of disqualification. If the collaborative process breaks down and fails, the attorneys are disqualified from representing either party in litigation. Otherwise, there is great flexibility in each collaborative case as the process develops over time and each practice group can determine what is appropriate for their own community.

The Benefits of Establishing a Collaborative Family Law Practice

Even though collaborative law requires a lot of work for the attorney, there should be significantly less stress for the attorney in the long run. Though there are times when you will be required to be extremely creative in formulating a plan and dealing with clients, the stress level is much lower than it is in a traditional litigation practice. In collaborative law, you are not forced to rely upon a third person such as a judge to make decisions for you and your client. Instead, the process is dictated by the parties and the parties make the ultimate decision as to what they want to do.

There should also be a dramatic reduction in the amount of receivables in your practice, which is a huge benefit to a practitioner. This is due to the fact that the payment of the professionals' fees is discussed during the joint meetings with the parties and the collaborative professionals. The professionals should be kept current in their bills, unlike in litigation where we often have to wait for a judge to order a party to pay us or we have to wait for an asset to be sold.

The way professionals treat each other in collaborative cases is much better than what typically happens in litigation and since all of the attorneys have been trained in the philosophies of the collaborative process, everyone has

a good idea as to how the process will work and what will happen from one step to the next. You will also have an opportunity to have multiple matters with a smaller group of attorneys. In a small community, this may not matter, but in a larger community where there are thousands of attorneys, this can make a huge difference—you are bound to have some sort of rapport with opposing counsel that you can rely upon. In a collaborative case, you know that everyone is working together toward a common goal. This makes for a much better practice and the attorneys will wind up with happier clients. The clients are then more willing to refer other people to the attorneys and if the process works properly, both parties should be very satisfied with the results. When they hear about other people getting divorced, there is an increased likelihood that they will share their positive experiences with the collaborative process and your law firm.

Even though it is not frequently discussed, many people go to law school because they have a philosophy that they want to help people. Collaborative law actually allows you to do this because it is a hands-on process and you can truly see the results of your hard work. You can help your clients through the divorce process and when you realize that your client is in need of additional help such as therapy, you can provide that. Unlike in the litigation process, the clients are not threatened by using additional professionals to help them through the process. In the collaborative process, you can explain to your client why it is in his or her best interest to use a mental health professional or a child specialist.

Putting Together a Collaborative Law Firm

Creating a collaborative law practice is a multi-step process that takes time. You cannot suddenly decide to practice collaborative law because there are many elements that go into this process. Many attorneys do not even know what collaborative law entails. Once you are exposed to collaborative law and you learn about the basics, you then must continue to receive training and decide if it is the right decision for you. There are some people whose personalities are not going to be collaborative, so this type of law is not for them. You have to believe in yourself in order to be a good collaborative lawyer because if you do not, you will not be able to sell yourself and the collaborative process to your client. Some lawyers hold themselves out to be collaborative, but they never obtain any collaborative cases because they

have never understood exactly what it means and they are not able to explain it to their clients.

Some firms will give the attorney the flexibility to practice as the attorney deems appropriate, but others may not. In most cities throughout the country, the majority of family attorneys practice in small firms, so these individual attorneys have more flexibility when it comes to integrating collaborative law into their practices. If you have the guts and the staying power to wait until collaborative clients come through your door, you can open your own office. If you do decide to get into collaborative law, it would be extremely helpful to have a relationship with an experienced collaborative attorney who can act as a mentor for you. You will be able to bounce ideas off of one another and share strategies and techniques. In our practice group, all of the attorneys who have been practicing collaborative law for a number of years are more than willing to act as mentors for new attorneys even though, in theory, that would result in more competition between attorneys. In reality, there are so many people getting divorced that there is enough business to go around for everyone and if more people are practicing collaborative law at a high level, then all collaborative family lawyers will be successful.

Obtaining the Necessary Forms

Certain forms are always used in each community, so the attorney must find out which forms are typically accepted in his or her area. These forms can usually be obtained through the local practice group, and if not, the experienced attorneys in the area can provide them to you. You should also join the local collaborative law practice group because even though it is not a legal requirement, you should join for practical reasons. You should belong to a practice group because if you do not, you will not be on the radar in your community and you are not likely to receive any collaborative cases. You should figure out where the collaborative group is, who is in it, and how to achieve membership. The practice groups generally have one of two philosophies—they are either very inclusive and will accept virtually anyone, or they are very exclusive and will only accept certain professionals. These philosophies differ according to the community you live in. You should also join the International Academy of Collaborative Professionals (IACP) because they can provide you with a huge amount of important

information. They also hold an annual forum that is a phenomenal opportunity to learn about the process and to talk with other collaborative professionals. You will be able to get new and creative ideas from other communities and continue to develop your own collaborative practice in your community.

Breaking into Collaborative

Collaborative cases vary depending on the clients you are dealing with and your community. In my experience, anywhere from 5 to 50 percent of my cases are collaborative at any one time and the amount of time I spend on each collaborative case can also vary significantly. One of the benefits of collaborative law is that it is somewhat predictable, especially in scheduling, because the joint sessions to discuss issues are scheduled by all of the parties in advance. You can have multiple sessions scheduled at one time, so you are able to run your office in a more efficient manner. You do not have someone suddenly filing an emergency motion and you are not forced to drop everything to run down to court. You do not have to waste time in court waiting for a prior hearing to be finished because you can schedule your meetings in advance; they almost always start on time and they typically only last for two hours.

Educating the Public and Other Attorneys

Once I really understood the collaborative process and was able to explain it properly to clients, enthusiastic people began to come to me seeking my help. Every time I introduce myself to someone new, I talk about collaborative law because the majority of attorneys and the general public do not know what it is. I have made the conscious decision to promote myself as a collaborative family lawyer. When I meet a new attorney, I explain what the collaborative process is and how I am educating the public about it. I want the attorneys and the public to know that I can offer a client an alternative to the litigation model that will usually result in a healthier resolution for the client. I also have collaborative information on my website, I have been interviewed by local newspapers about the collaborative process, and I lecture about it at the University of Florida Levin College of Law. I have spoken to local civic groups and to several local bar associations in an effort to teach them about collaborative law.

Once you really understand the process, it is only a matter of promoting yourself and educating others about the process.

Practicing in the family law arena is unique because virtually every single adult is a referral source or a potential client. This is because everybody knows someone going through a divorce if they are not going through one themselves. Therefore, even if you are meeting someone who may never get divorced and who is not an attorney, that person may hear about the collaborative process and when someone tells them that they are getting a divorce, they may refer that person to you. It would be great if we could have a massive marketing campaign to let people know that collaborative law exists, but in most communities, that is simply not a reality. The IACP does have a prepared marketing campaign that communities can purchase so that they do not have to reinvent the product, but it is still an expensive process. Attorneys have to be aware of their own incomes, so most of them are not willing to spend their own money on marketing campaigns. States can also have stringent ethics rules as to what is permitted in terms of marketing.

Marketing Techniques

Aside from word of mouth, I have also used a newsletter to promote my collaborative practice to attorneys. Please note that your state bar association may place limitations on what is allowed in terms of marketing. The newsletter included introductory information about collaborative law and referred to a potential statute that was before the legislature at that time. The statute was not passed, but I was trying to expose professionals to collaborative law and explain that it is a viable alternative. Most attorneys in the corporate area do not want to refer their clients to an attorney who is going to churn the water because it will cause their client to spend too much money in attorneys' fees. If these corporate attorneys knew that the collaborative process exists, they would be enthusiastic about referring their clients to a collaborative attorney because we do not churn the water but instead we help the parties resolve their issues in a cooperative and calm manner. As a result, those corporate attorneys will look good to their clients because they referred their clients to a process that is often better than the litigation model.

The Financial Benefits

Some family law attorneys are able to reduce the size of their staff when they switch to the collaborative process, so if you are looking to save money, collaborative law can be very cost-efficient. Litigation requires a lot of extra time and energy in terms of gathering documents and completing a thorough analysis. In the collaborative process, these steps can be simplified because you may not have to go through each piece of evidence and each piece of paper in as much detail. For example, in the state of Florida, there is something called mandatory disclosure. These are documents that the Florida Supreme Court has determined should be the minimal documents exchanged between parties, but in the collaborative process, this can be waived. In reality, every attorney expects that mandatory disclosure will occur, but some of the paperwork is inappropriate in certain cases. Therefore, in the collaborative process, instead of gathering all the required and sometimes unnecessary documents, you can focus on only the truly relevant documents. Gathering documents is up to the parties and the professionals in the collaborative process and you are able to have more flexibility. In addition, the typical collaborative meeting will last only two hours and you do not need as many staff members to help you with the process. You do not have to worry about subpoenaing records from third parties because documents are voluntarily exchanged in the collaborative process. You can simply ask the other side to produce what you need.

Creating a Successful Collaborative Family Law Practice

Since the collaborative process is still in its infant stages in the majority of the country, you must have patience if you want to be successful. You must be devoted to the collaborative process and be willing to do what it takes to educate your clients and expand your practice. I have been working for several years on getting a collaborative statute in our state, so it is important that you are dedicated to the idea of convincing others that collaborative law is a positive and beneficial area of law. You must be willing to hold yourself out as a collaborative attorney and sell yourself so that people will know you and will know about the process. Over time, people will refer clients to you and eventually, your practice will truly become a collaborative one. You know that you will have succeeded in that effort when a family judge describes you as a collaborative attorney, as a judge recently did about

me. As experienced litigators get older and more fed up with the litigation process, they often decide that they do not want to do it anymore. Many of these experienced litigators turn to mediation because they do not want to fight anymore. We should teach these litigators that collaborative law is an alternative to litigation and mediation. They can still be involved in dissolution of marriage matters, but they no longer have to deal with the inherent problems that exist in the litigation setting. Even though I am only experienced with collaborative law in the family setting, it is practiced in other areas of law as well. In some parts of the country, it is being used in commercial disputes and probate disputes because the concepts of collaborative law are transferable to other types of disputes. It requires people coming into the process to have a different mindset and philosophy along with a real dedication to resolving whatever differences may exist between the parties, without having to resort to the judicial system.

Most importantly, I would urge people to get involved in their local practice groups and try to take a leadership role within that group. The more involved you get, the more you learn about collaborative strategies, and when you establish relationships with other people, you increase the likelihood that your reputation is going to be positive. You are more likely to be known as a collaborative professional, and in an interdisciplinary practice group, you can establish relationships with mental health and financial professionals who will refer business to you.

Strategies for Becoming an Effective Collaborative Lawyer

In order to become a good collaborative lawyer, you must be flexible and you must be willing to give up the traditional sense of power that attorneys are known to possess. The collaborative movement has been described as a paradigm shift because historically attorneys have been responsible for everything in the legal process. In contrast, in the collaborative model, you are forced to realize that there are other professionals who are better qualified to handle certain issues. For example, a mental health professional is better equipped to handle the emotional issues that arise in so many divorces. Very few attorneys have the training background to handle these emotional issues, but the neutral mental health professionals do have that expertise. In addition, those professionals probably charge at a lower rate than attorneys do, so if the attorney is willing to give up that control and

pass it over to the mental health professional, the client will be better off emotionally and financially. The client will have a better qualified professional as an advisor and the client will be spending less money to receive that advice.

You must also be willing to cooperate with the other side and you frequently have to change the way you think, talk, and act as a lawyer. You should become more aware of your facial expressions, intonation and body language because the collaborative process is a non-threatening process in which everyone tries to help the parties get through an extremely difficult time in their lives. If your only interest is to fight for what you feel is in your client's best interest regardless of the collateral damage that can result, then collaborative law is not for you. If your interest is in doing the best for your client and truly looking at all of the issues that affect your client, then collaborative law could be a great match for you. However, it is not for me to say who can or cannot be a collaborative professional. There are some attorneys in our community who I look at and assume that they will never be collaborative attorneys, but people do change sometimes. They can learn about the collaborative process, change their philosophies, and begin to realize that the way they have been practicing law no longer works or that there are better ways to do it.

Training

There are different types of trainings available throughout the world. My experience has been that the best trainings are interdisciplinary trainings that involve family attorneys, mental health professionals and financial professionals. I do not recommend a training being less than two days, but you can still receive some benefits from shorter trainings. I do not think that you have enough tools to practice collaborative law and do a good job representing your clients if you have only received minimal training, but abbreviated trainings can at least give you a taste of the collaborative process. Attorneys should attend multiple trainings, but it can be an expensive process because you are paying for the training itself and you are either taking time off of work or time away from your family. However, these trainings should be looked at as an investment for your future because you become a better legal professional by attending them. There are also

many different books and other types of literature available in print and online that people can read to educate themselves. A number of organizations exist that contain various collaborative professionals and you should figure out if there is a specialized section of your state bar for collaborative lawyers. The discussions you have with other collaborative professionals are part of your training as well. Formal training is critical and although, at this point, there is no statute that requires a certain amount of training, we are asking the Florida Supreme Court to establish standardized training criteria. If the Florida Supreme Court were to create a separate rule regarding collaborative training, they would probably require a multi-disciplinary training that involves the history and philosophy of the collaborative process and that demonstrates how the process actually works. This is crucial because many times attorneys who attend a collaborative training are not able to visualize how the process actually works, so if there is an actual demonstration, they will be much more prepared.

It is also important for collaborative lawyers to continue attending trainings throughout their careers to keep their skills up-to-date. I have attended many trainings and I will continue to do so. I also recently helped to present a training and I will continue to lecture about collaborative law throughout the community. The collaborative process is always evolving and it would be inappropriate for someone to think that attending a single training is sufficient. You can always learn something, even if you are an experienced collaborative professional. Collaborative lawyers should try to attend an extensive training at least once every two years. In theory, the reputation of the trainers is critical, but it is very difficult for professionals to obtain information about the reputation of the trainers unless others in the community have attended trainings that were run by the same trainers. All in all, lawyers should attend trainings based on cost, location, and timing.

It is certainly difficult for traditional lawyers to make the commitment of becoming a collaborative lawyer and going through the entire training process. Even so, the collaborative process is becoming more and more popular as the days go by and many lawyers are extremely enthusiastic about being trained. When we presented a multi-disciplinary training a few months ago, the feedback we received was not only positive, it was enthusiastic, including some people saying that it was the best seminar they

ever attended. This further proves collaborative law is growing and the movement is picking up steam.

General Tactics for the Collaborative Model

When deciding whether a family law case is suitable for the collaborative process, we typically analyze the facts of the case and the characteristics of the clients. The best type of collaborative family law case is probably one that involves a divorcing couple that wants to protect their children from the detriments of the litigation process. Instead of putting themselves first, these types of couples want to unselfishly make their children the priority. It takes people who are willing to make a commitment to the collaborative process and who are devoted to resolving everything. Sometimes, this is extremely difficult because you may be dealing with infidelity, mental health issues, substance abuse, or domestic violence. All of these cases can be done collaboratively, but it takes a lot of work. You may have to create some unique situations if there is a domestic violence issue because you may have to hold meetings over the phone rather than in person or in two different locations. If you are dealing with a substance abuse issue, you may want to bring in a substance abuse expert to help deal with the person who is abusing alcohol or drugs and that person's family members.

The Benefits of Collaborative Law for Certain Types of Cases

The collaborative process is also very good for people who have concluded that they simply do not want to stay married anymore. This does not happen often, but there are times when a client will come to me without any animosity. These types of clients realize that they have just grown apart from their spouse and they are taking the mature route by moving on with their lives. There is also a population of people that realize that they do not want to live a heterosexual life anymore, so dissolving such a marriage in the collaborative way is a healthy way to do so. Collaborative law is also a great way for same-sex couples to resolve issues because, in most states, same-sex couples are still not permitted to get married, so there is no process to dissolve their relationship. If a same-sex couple wants to part ways, the collaborative process is a healthy way for them to do this.

Many wealthy people or public figures also seek collaborative law when dissolving their marriage because everything other than the final hearing is done in private. Nothing becomes public record until the very end of the process, and even then you are able to limit what becomes public record. In the collaborative process, the same allegations and theories can be used, but it is done privately. The whole world does not know about every financial or personal impropriety that ever occurred throughout the marriage because in the collaborative process, you can control your own destiny to an extent. by limiting what is filed with the court You also do not have to gamble on what the judge will decide because the parties determine how the process will turn out.

Cases That are Not Suitable for Collaborative Law

Some people believe that cases involving domestic violence are inappropriate for collaborative law because there is a disparity in power between the couple. I understand the philosophy behind this point of view and that you have to be very careful if there is a presence of domestic violence. If you have a client who insists on being secretive and uncooperative with the other side, you cannot complete the case collaboratively. Ethically, attorneys should not assist a client who is being secretive, but in reality, many attorneys still do that. In the collaborative process, both parties must be willing to put out the effort to resolve the case collaboratively and to cooperate with each other. If one party is not going to cooperate, the collaborative process will fail. If one party is narcissistic, it will also be difficult to handle the case collaboratively.

Collaborative law also tends to be difficult if you are dealing with significant monetary issues. Some jurisdictions throughout the country practice collaborative law on a pro bono basis or with legal aid, but Florida is not one of them at this time. This process is costly for the professionals involved, but ideally, it would be great if collaborative professionals would handle at least one collaborative pro bono case per year.

Relocation cases are also difficult to complete in a collaborative manner because in these situations one parent wants to take the children involved and relocate to another community. This results in a change in the timesharing that previously existed between the parents. There is nothing

stopping parties from handling such a post-judgment case collaboratively, but it is very difficult, because frequently relocation cases are very black and white—there is a move or there is not a move. However, if you are creative, you can work through the issues and help the parties create solutions to various issues that divide the time and cost of transporting the children in a way that both sides can live with.

The Overall Collaborative Strategy

I am very enthusiastic about the collaborative model and I think that I successfully communicate this enthusiasm to the other professionals and clients with whom I work. One of the first messages that I communicate to the opposing spouse at the first joint meeting is that I am not a threat to him or her. I am there, along with the other professionals, to help both spouses resolve their issues. It is very important to me that the other spouse trust me. The opposing spouse may not like the advice that I give to my client, but ultimately we are there to work together to help the parties determine what is in their best interest. I am very careful about what I say and how I say it. If there is another professional participating who, in my opinion, says something inappropriate, I will discuss that with the other professional because there is always room to improve how we conduct ourselves. There is nothing wrong with considering doing something in a different way. I always pay attention to the way my client reacts to certain comments and scenarios and I do not hesitate to talk to my clients whenever I feel that it is necessary.

Traditionally, family law attorneys are trained to make decisions for their clients, so the collaborative model is a big change to adapt to. Clients in the collaborative process are never threatened to act a certain way or to say a specific thing. You may not have an agreement and the case may not ultimately get resolved collaboratively, but the collaborative professionals will do everything in their power to be creative and to come up with many different potential solutions for both parties to consider. In my experience, collaborative law has been a more creative and thought-provoking method of practicing law. For example, I had a meeting in one of my cases where there were two parties diametrically opposed in what they wanted to do. The other attorney, the mental health professional and I worked very hard to talk to the parties about what the impact would be if they made certain

decisions and ultimately, the parties resolved the issue. This session was longer than two hours, but we were so thrilled and proud of what we accomplished for the benefit of the parties and their children. This feeling is not common in litigation, where usually only one side will be satisfied. In collaborative law, there is a mutual feeling of accomplishment and pride. Collaborative law is a wonderful way for any professional to change his or her life for the better.

Common Techniques

If you want to be a successful collaborative lawyer, you must have a lot of patience and you must be willing to deal with your client's issues. You must also be willing to deal with the opposing client's issues and the dynamics of the other professionals who are involved. You have to be patient to work through each step of the case and to realize that one party may identify something as an issue even though you or your client may completely disagree. If one party thinks something is an issue, you must be ready and willing to address it, discuss it, and try to resolve the problem. Part of the resolution may be to convince that person that the issue is not as big of a deal as he or she thinks. Part of the resolution may require that you talk to your client about compromising. You must also be ready to work with the other professionals, which is part of the paradigm shift of moving from traditional litigation into the collaborative setting. Attorneys must be ready to give up some of the control of the situation. It is a breath of fresh air to be able to work with a team instead of trying to do everything yourself, and even if you are great at handling every issue that comes your way, chances are that there are other professionals in your community who are more qualified and more capable of handling certain issues.

It is extremely helpful to continue to read any available literature about collaborative law, to talk to other collaborative professionals, and to attend seminars that are offered. You end up learning a great deal of new techniques and you meet many different types of people at seminars. In theory, you can actually put yourself in the position to have business referred to you from people you have met in various seminars and conferences. Here in Miami, we have people who come from other countries and states and who have relatives throughout the state of Florida, so if you expose yourself as a collaborative professional to someone in

another state or community, that person may call you because they know someone in your community who needs your help. This can also happen in other areas of law, but it is especially beneficial in the collaborative arena because collaborative professionals are more likely to refer clients to other collaborative professionals as opposed to a traditional family law attorney. There is an alignment of philosophies between collaborative professionals because they understand that it is usually in the client's best interest to handle the matter collaboratively. Therefore, they will do their best to look for someone who has a similar philosophy.

Introducing Collaborative Law to Clients and Other Lawyers

When it comes to clients, you should take the time to explain the collaborative process and discuss it as a viable alternative. When you meet new lawyers or even new professionals of any kind, talking about collaborative law is a good segue that allows you to show your knowledge and enthusiasm. Every single person you meet is a potential client or referral source. I therefore belong to several business groups as a collaborative family attorney, so when I have the opportunity to talk about myself and explain what I do, I can educate others about the collaborative process. When a client comes to me for a consultation, I talk about all of the available alternatives and which is most appropriate for them. Many litigators will not even mention collaborative law to their clients, so most people will not know anything about the collaborative process. I talk to the client about reconciliation, self-representation, mediation, collaborative law, and litigation. When clients come to me, I explain what the collaborative process is and that if they want to go down that road, they must make a commitment to do so.

Engaging Clients

I introduce the concept of collaborative law at the initial consultation after I have asked the client about the facts of his or her case. I explain in general terms the law in our state and I go through the details of each available course of action. I explain what will happen through litigation, mediation, and collaborative law. I talk about the philosophy and the rules behind collaborative law.

The biggest hurdle that most collaborative attorneys face is the fear of disqualification because if the process breaks down, they will lose their client. In reality, this only happens about 10 percent of the time, so the vast majority of collaborative cases are successful. If you are truly dedicated to helping the parties resolve their case, you will most likely succeed and the threat of withdrawal should not be a problem. Sometimes a client will ask about disqualification and failure when they initially speak with me, but I explain that it rarely happens and that most couples can successfully resolve their issues collaboratively if they are willing to make the commitment to resolve the case. In addition, disqualification provisions are actually beneficial to the client because nobody can threaten litigation as a coercion tool, so everyone is more focused on helping to resolve the case.

Common Misconceptions

Some people fear that one side will hide documents in the collaborative process and that you are better off litigating because discovery is court ordered. This is an inaccurate perception of the collaborative process because if a party is going to hide documents, that party would also hide documents in the litigation process, so the same exact situation would arise. The same exact relief is available to parties in Florida regardless of whether a party hides documents or information in the collaborative process or in litigation. If a fraud was perpetrated by a party in the collaborative process, you have the ability to go into court within a certain period of time after the final judgment was entered to ask the court to set aside the agreement. The same right exists if the fraud occurred through litigation. Some attorneys believe that unless you subpoena records, you will not get everything you need, but in the end, you receive the exact same information in the collaborative process as you do in the litigation process. Attorneys often feel that they will lose income if they handle a case collaboratively. In theory, they may earn less money in a particular collaborative case as opposed to that case being litigated, but they will end up having less stress and they will also have less receivables. This means that in the long run they will actually be better off financially because you can litigate all you want, but if you cannot collect what is owed to you, the case is financially worthless. From a business perspective, you will have happier clients who will be more likely to refer cases to you, which means that you will continue

to expand your practice and obtain new clients. You will also be able to handle more cases at one time than if you were only litigating, so overall, I firmly believe that a practitioner will earn more money in the long run by practicing collaboratively. Most importantly, as I tell other professionals, I believe that I will live longer by practicing collaborative law because I will have less stress in my life. Nobody can put a price on the quality or length of life.

Conclusion

The University of Florida Levin College of Law is a perfect example of the trend that more and more attorneys are coming out of law school with exposure to the collaborative process. This means that more and more lawyers will be practicing collaboratively and choosing collaborative law especially for divorces. If traditional litigation attorneys do not want to become educated in the collaborative process, I believe that they will be left behind. One of my statewide goals is to put attorneys in a position where clients are coming into their office asking them if they practice collaborative law. This is beginning to happen now and the more that happens, the more attorneys will choose to find out about the collaborative process and to become collaboratively trained. Even if this is not legally required, the market will naturally weed out lawyers who are not properly trained and who are not practicing collaborative law properly. As time goes on, more professionals will learn about collaborative law and the public will be demanding that collaborative law be available for everybody. At some point, bar associations may actually require that all family law attorneys discuss the collaborative model as an alternative to litigation. In my opinion, if an attorney does not know about the collaborative process and is not practicing collaborative law, they are doing a disservice to their clients.

Key Takeaways

- Remain up-to-date and educated by taking part in trainings as frequently as you can. Even though you have to spend your own money and take some time out of your practice, you will benefit in the long run.

- Take part in local organizations, seminars, and activities. Every person you meet is a potential client or referral service. Do not just sit back and watch.
- Present yourself as a collaborative lawyer and get your name out there. If you want people to take you seriously, you have to hold yourself out to be an enthusiastic and dedicated collaborative lawyer.
- Join your local bar associations, business groups and collaborative groups. Take on a leadership role and become an integral part of the group. This is the best way to meet other collaborative lawyers and to learn more about the process.
- Understand that even though one collaborative case may not give you as much money as one litigated case, you will actually be better off emotionally and financially in the long run because you will be less stressed, you can work on more collaborative cases at one time, you will have happier clients who will refer more clients to you, and you will have fewer receivables.
- Expose yourself to collaborative law. More and more young attorneys are gaining collaborative experience in law school and in practice, so you do not want to be left behind.

Robert J. Merlin is a senior partner and president of Robert J. Merlin, P.A. in Coral Gables, Florida, specializing in marital and family law, especially collaborative family law. Mr. Merlin is Florida Bar Board Certified in Marital and Family Law and has been practicing law in the State of Florida for over thirty years. He is a member of The Florida Bar, the American Bar Association, the Dade County Bar, the Coral Gables Bar, the International Academy of Collaborative Professionals, the Collaborative Family Law Institute, and Collaborative Family Lawyers of South Florida, the last three organizations being dedicated to the promotion of the practice of collaborative family law as a means of amicably dissolving marriages and resolving family disputes. Mr. Merlin is the President of the Collaborative Family Law Institute. He is a member of the Association of Family and Conciliation Courts and is on the Board of its Florida Chapter, the Eleventh Judicial Circuit Court Parenting Coordinators Advisory Board, and the University of Florida Levin College of Law Center on Children and Families Advisory Board. He is also on the Legislation Committee and is co-vice chair of the

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Mr. Merlin graduated with honors from the University of Florida College of Law with a Juris Doctor in 1978, where he also was an associate editor of the Law Review, and attended Cambridge University, Cambridge, England, The Institute of Law-Polish Academy of Sciences in Warsaw, Poland, and the Walter F. George School of Law, Mercer University in Macon, Georgia. Mr. Merlin received his undergraduate degree from the University of Florida in 1976 with a Bachelor of Science in accounting.

Mr. Merlin received the 2006 Dade County Bar Pro Bono Outstanding Law Firm Award and the 1998 Florida Eleventh Judicial Circuit Ray H. Pearson Guardian-Ad-Litem Award. He is listed in the Leading Florida Attorneys in Family Law with the Network of Leading American Attorneys, is among the Florida Super Lawyers and the Florida Trend Magazine Florida Legal Elite, he is AV rated with Martindale-Hubbell and he is listed in Martindale-Hubbell's Preeminent Family Law Attorneys.

Mr. Merlin has a long history of involvement in various community organizations. He received the 2008 Gator Award from the University of Florida Hillel, he is a past chair of Jewish Community Services of South Florida Inc., and he is on the Board of the Greater Miami Jewish Federation.



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