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Family Diplomacy: A Collaborative Law Firm

FamilyDiplomacy.com

Incentivizing Collaborative Practice

Helping Clients Choose to Collaborate

<CHN>Chapter 9

<CHT>Getting Buy-In for a Collaborative Approach from the Other Spouse and Attorney

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<TX1>A mental health professional with whom I love to work always reminds me of the grand inequity of divorce: "It takes two people to decide if they want to get married, but only one to decide to get divorced."

<TX2>Because your client may have unilaterally decided to end the marriage, you may need to educate and motivate the other spouse to engage in the Collaborative Process, even in situations where he or she has no desire to get divorced at all (see Chapter 10 for a discussion on Collaborative consultations and Chapter 5 for a discussion on helping clients decide that they want to Collaborate). This challenge can seem insurmountable.

How do you get a Collaborative case? Well, you don't. Instead of focusing on "getting" cases, take responsibility for "creating" Collaborative cases. Engaging with the other spouse to educate and motivate him or her about the Collaborative Process will go a long way in helping you create more Collaborative cases. If your client is married to a reluctant spouse, you need to know what is causing the resistance to using the Collaborative Process and learn what tools are available to break down this resistance.

<H1>Why Might the Other Spouse Be Reluctant to Engage in the Collaborative Process?

<H2>Just Not Ready

<TX1>The reluctant spouse may have not asked for a divorce or even seen it coming. He or she is not emotionally ready to move forward and may be emotionally paralyzed by fear and sadness. Thus, why would you expect cooperation of any kind? Perhaps the reluctant spouse is angry or vengeful, in which case he or she is likely to reject any suggestion related to process choices

coming from you or your client. Even worse, if there has been any type of betrayal, the other spouse may be suspicious and has reason to not trust your client. In that case, the spouse will be even more reluctant to follow any course of action recommended by your client or you—even if it is in his or her best interest.

<H2>Protection

<TX1>I often hear clients say they need (and have been advised) to protect themselves by finding a strong and aggressive attorney to zealously advocate their positions. Reluctance to consider the collaborative option may simply be because the other spouse feels vulnerable and in danger. Divorce can often feel like an act of war. Reluctant spouses may feel they need the proverbial knight in shining armor to slay the marital dragons. If it is an aggressive knight they crave, they may fear him riding off into the sunset if the case fails to settle in the collaborative process—abandoning them in their flight.

<H2>Validation and Punishment

<TX1>Reluctant spouses may feel they need an "authority figure" in a judicial robe to validate them. Alternatively, maybe a punitive figure is sought to right the wrongs committed by your client during the marriage—someone with the power to enforce and compel. The virtue of the consensual and voluntary nature of the Collaborative Process may also be viewed as its weakness.

<TX2>These apparent obstacles might be a signal that a Collaborative Process is not right for this couple. However, there is not yet enough information to fully screen the process for this couple (see Chapter 17 for a discussion on screening). We certainly do not yet fully understand who the other client is and what his or her needs might be. How might we learn this?

<H1>Who Is the Other Client and How Can the Collaborative Process Meet His or Her Needs?

<TX1>As a starting point, listen carefully as your client talks about his or her spouse and try to elicit what the spouse's interests might be. Simply put, interests are the spouse's underlying concerns and needs—not just what he or she demands or says is needed. Asking your client open-ended questions is the best way to elicit interests. What does your client think is most important to the spouse? Is it the spouse's long-term security or perhaps moving at his or her own pace through the divorce process?

<TX2>If asking open-ended questions does not come naturally to you, just try asking questions such as the following:

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- "Why?"
- "Why does she reject everything that you propose?"
- "Why does he refuse to answer your emails?"

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If "why" questions do not work or if you are unsure about eliciting interests, it may be productive to bring in a mental health professional to an initial meeting (see Chapter 17 about the use of mental health professionals in initial consultations). Many therapists and social workers in your community have been specially trained to deal with difficult dynamics.

<H1>What Are the Roles of Your Client and the Collaborative Team Members in Educating the Other Spouse?

<TX1>Coach your client on how best to talk to his or her spouse. Once you feel you have a solid understanding of what is most important to the other spouse, tell your client that you would like to help him or her educate the spouse about the advantages of the Collaborative Process, as it would be of interest to them and their family. Help your client tailor his or her message. Encourage your

client to take notes during this conversation. Whether or not your client is the initiator of the divorce, chances are good that your client's cognitive functioning may be compromised due to the stress of the situation.

<TX2>*Role-play your client's conversation with his or spouse.* You may want to suggest to your client that you both rehearse or role-play the conversations that he or she will have with the spouse. For example, if the spouse may be concerned about the disqualification clause, you can coach your client to explain that it is rarely used because the vast majority of Collaborative cases end in full agreement.[29] If the spouse is afraid that he or she will not be able to get all the financial information needed, explain that a neutral financial professional can be utilized to "trust but verify" financial representations and ensure transparency (see Chapter 15 on the use of a financial neutral in Collaborative cases).

Gleaning the other spouse's key concerns and interests from your client can help you coach your client to communicate potential benefits which might resonate with the other spouse, such as the following:

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- *Concerns about time*. The other spouse may be a busy professional, an executive or other high-profile type. Losing control over his or her busy schedule, time away from

[29] Research by the International Academy of Collaborative Professionals indicates that 86 percent of collaborative cases internationally reach full agreement (*see* International Academy of Collaborative Professionals, *FAQ Based on Cases Reported to the Practice Survey as of July 6, 2010*, accessible at https://www.collaborativepractice.com/sites/default/files/FAQ_IACPProfessionalPracticeSurveythrough7_6_10_0.pdf); here in Florida, statistics from the Florida Academy of Collaborative Professionals show that 92 percent of collaborative cases end in full resolution (*see* Adam B. Cordover & Randy Heller, *Statistics on Collaborative Divorce in Florida (1/31/2018 Update)*, accessible at http://familydiplomacy.com/statistics-on-collaborative-divorce-in-florida-1-31-2018-update/).

work, and the resulting decreased productivity associated with litigation may be intolerable. The Collaborative Process permits the spouse to have control in setting meetings when they are least inconvenient.

- *Effect on children*. Perhaps you hear how incredibly important the children are to the spouse. Maybe the other spouse is a stay-at-home parent or a schoolteacher. You may want to place additional emphasis on how the Collaborative Process lessens the effects of divorce on children and the direct connection between the degree of conflict associated with the divorce and the damage inflicted upon children. Explain how in the Collaborative Process, children's needs and family relationships are prioritized, both during and long after this process is over. Explain how the children's voice is brought into the room when necessary through the use of child specialists (see Chapter 16 on child specialists).
- *Privacy and confidentiality*. Privacy and confidentiality are key concerns of many clients. Everyone from CEOs to teachers want their privacy protected. Because there are no contested public hearings or trials, only the bare minimum of family information is filed in a Collaborative case.</BL>

Offer to speak to the other spouse by phone. As long as my client has no objections, I always offer to speak with the other spouse over the phone to introduce myself and to answer any process-related questions that he or she may have. Once we have established a rapport and the spouse understands that I am not the stereotypical aggressive trial lawyer, he or she is much more likely to reach out to someone on my list of Collaborative attorneys. I can address the reluctant spouse's key concerns as elicited from my initial interview with my client.

Provide your client with your preferred list of Collaboratively-trained attorneys. Make sure your client explains to his or her spouse the benefit of having two trained Collaborative attorneys: It increases the probability of reaching full resolution. Then, provide your client with a filtered list of specific Collaborative attorneys with whom you have successfully completed Collaborative cases (or believe with whom you can work well) so that your client can give the list to his or her spouse. Make sure in advance that these attorneys know they are on your list and that they are committed to making themselves available for a telephone conference or to consult in person with the other spouse. This approach works very well. Although many attorneys are convinced that the other client will not take direction from his or her spouse's attorney, this is often not the case.

Provide your client with a general list of Collaboratively-trained attorneys. Nevertheless, there are always spouses who want to pick their own attorneys without any direction from me. In those cases, I give my client a brochure containing a list of the members of my practice group to provide to his or her spouse.

Send an e-mail to your client with information intended to be forwarded to the other spouse. If the other spouse is more technologically driven, send an e-mail to your client to forward to the spouse, which contains useful links to websites such as the International Academy of Collaborative Professionals (www.collaborativepractice.com) and local practice groups so that the spouse can conduct his or her own search for a Collaborative attorney.

Give your client resources to share with the other spouse. Additionally, give your client articles about Collaborative Practice as well as brochures from the International Academy of

Collaborative Professionals and a book or two.[30] Depending on their relationship, the client can give these to the spouse directly or just leave them on the kitchen table.

Suggest that the other spouse look at your website. I also suggest that my client refer the other spouse to my website, which reflects that my entire practice is comprised of nonadversarial, resolution-oriented work (see Chapter 6 on marketing your Collaborative Practice). If the other spouse gets a sense of who I am, this may relieve some anxiety about the attorney hired by his or her spouse. The spouse can vet me in advance, and I am happy to have a conversation with him or her.

Suggest that your client and the spouse meet with a Collaboratively-trained allied professional. If the other spouse has not yet consulted with a Collaborative attorney and is not ready to do so, consider having your client suggest to the spouse the option of meeting with a Collaboratively-trained mental health or financial (allied) professional. If the other spouse's primary concerns relate to business valuations, tax consequences or other financial matters, you might suggest that the spouse meets with a financial professional. If the hesitancy is based on communication challenges with your client, concerns surrounding the children, or simply a lack of trust, it may be particularly helpful for the spouse to meet with a mental health professional.

These initial meetings with an allied professional can serve as an opportunity to educate both spouses and allay any possible concerns that either may have. Furthermore, it can serve as an opportunity for the professional to provide reassurance to the couple about whether the Collaborative Process is appropriate for their family. Having your client and the spouse meet with

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[30] *See*, e.g., Forrest S. Mosten, COLLABORATIVE DIVORCE HANDBOOK: HELPING FAMILIES WITHOUT GOING TO COURT (2009); Jeremy S. Gaies, A CLEAR AND EASY GUIDE TO COLLABORATIVE DIVORCE (2018); Pauline H. Tesler, COLLABORATIVE DIVORCE: THE REVOLUTIONARY NEW WAY TO RESTRUCTURE YOUR FAMILY, RESOLVE LEGAL ISSUES, AND MOVE ON WITH YOUR LIFE (2007).

an allied professional has other benefits, too. The professional may be able to recognize hurdles that were missed at the initial attorney-client interview. The professional may be able to glean if there is any hope of getting buy-in from the other spouse or how to organize the hard topics needing resolution. For example, the mental health professional may suggest that only address parenting issues be addressed at this time because that is all the spouse is emotionally prepared to deal with. In that case, the allied professional can help to develop a roadmap to guide both professionals and the clients about when and how both the underlying emotional needs and the legal needs will be addressed. Finally, if the allied professional assesses that the Collaborative Process is not the right process for this family, the professional can steer both the clients and the legal professionals toward the process that best meets the needs of this family before the spouses make a commitment to an option that is not best suited to them.

Have your client suggest that the spouse confer with key people in his or her life for feedback on the choices of divorce processes. The spouse may want to speak with their accountant or wealth manager, who undoubtedly has seen other clients go through divorce and witnessed wealth be utterly decimated. Have the spouse speak to his or her therapist or to their marriage counselor, who has seen the destructive nature of litigation on families and children. Remember, from whom the message comes is often as important as the message itself. Have your client identify people in the spouse's life who are trusted and relied on for support. You may want to suggest family members and friends or clergy and offer to provide those persons with materials and references to information on the Collaborative Process.

Use other innovative approaches. Depending on both your risk tolerance and the ethics and bar rules in your jurisdiction, you might also want to consider another less conventional option. It is one that is utilized and recommended by our editors, Forrest S. Mosten and Adam B.

Cordover. Prior to being retained by your client, you might offer to meet with both clients together, with or without the mental health professional present, to discuss the Collaborative Process. Our editors would advise that if you choose this approach, make sure to have both clients sign waivers in advance that specify that the attorney can only represent one spouse, and that the spouses waive any potential conflict of having both speak with the attorney. The waiver should also specify that the attorney will only be discussing process options and will not be providing any legal advice. You can find a sample waiver in the Appendix.

You may also want to make it clear before they come in that the Collaborative attorney will only represent the spouse who initially contacted the office. Another approach is to assure both parties that neither may choose you unless the other party agrees to that choice. Once the other spouse hires a Collaborative Lawyer, you may also want to have the Collaborative attorney sign a waiver of your conflict of interest as well.

Another unconventional approach suggested by our editors is prior to either attorney being retained, have the clients meet together with the two Collaborative attorneys (who are not affiliated with one another). In these two-attorney, two-client meetings, the clients may even begin the Collaborative Process by the end of this consultation.

<H1>The Challenge of Working with a NonCollaboratively Trained Attorney

<TX1>What if your client is ready to hire you as a Collaborative attorney but you learn that the other spouse has *already* retained an attorney who is not Collaboratively trained? Or, what if your client wants to hire you as a Collaborative attorney but you learn that the other spouse *fully intends* to hire a specific attorney who is not a Collaborative attorney? Should you approach the other attorney to inquire whether he or she might be willing to do a Collaborative case? The answer

depends to a great extent on your own comfort level and the degree of experience you have working on interdisciplinary Collaborative teams.

Some attorneys, especially newly trained Collaborative attorneys, may not feel comfortable taking on the engagement under these set of facts. Obviously, the advantage to you of giving it a try is that you do not lose the case; in addition, from the client's perspective, the alternative of hiring litigation counsel may not be optimal. You have the opportunity to save a family from a worse process. If I decide to accept the case, I would insist on having a full interdisciplinary team—or at the very least, include a seasoned mental health professional. Our Editors and others would leave such choice to the clients.

When faced with these circumstances, there have been occasions when I have agreed to work with a nontrained attorney, but only when I knew that attorney to be conducive to the Collaborative Process. Some of those attorneys were more "shifted" than many attorneys I knew who had been formally trained. If the other attorney is willing to learn, follow Collaborative principles, and sign a Participation Agreement, I will work with the attorney and offer to mentor him or her through the process.

It is advisable to be proactive and assume that this scenario will occur. Have your Collaborative community set up a mentoring program to mentor the nontrained attorney through the process by another experienced Collaborative attorney other than you. Depending on your comfort zone, you may also want to seek mentoring for yourself as to how to handle this situation prior to commencing the case as well as during the process. Also, have members of your practice group provide mini-trainings for these untrained attorneys. The other attorney could also be referred to taped continuing education courses on Collaborative Practice. You could lend the other attorney books, articles, and manuals from conferences. You could refer him or her to protocols

set up in your area and/or by the International Academy of Collaborative Professionals. Even if the other attorney has already been retained and has filed a court action, I would not hesitate to ask if he or she would be willing to convert the case into a Collaborative case and sign a Participation Agreement.

Lastly, if you learn that there is another non-Collaborative attorney already on board who will not sign a Participation Agreement, consider asking your client to approach the spouse about having his or her attorney and the case placed on a "litigation freeze." In this scenario, the case could be abated and the litigation attorney placed on hold for 60 or 90 days while the other spouse hires a Collaborative attorney, with whom you can attempt to resolve the issues of the case during this time period. The litigation attorney is not necessarily discharged. The extent of communication and involvement of litigation counsel is subject to negotiation. If the case is not resolved within the designated time period, the litigation attorney may reenter the case.

<H1>Conclusion

<TX1>This chapter has provided diverse approaches and tools to utilize when engaging the other spouse in the Collaborative Process and when dealing with a nontrained or non-Collaborative attorney. If you choose to ignore these aspects of case creation and decide that these tasks are not ones you wish to take on, you may still "get" a Collaborative case here and there, but you will never maximize your potential to create them.

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<BT>Practice Tips

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1. Don't focus on "getting" collaborative cases; rather, take responsibility for "creating" Collaborative cases.

2. Listen to your client about why the other spouse may be resistant to Collaborative Practice, and provide your client with the tools to answer that resistance.
3. Use open-ended questions to help your client articulate why his or her spouse may be resistant to the Collaborative Process and what his or her needs are.
4. Encourage your client to take notes on how best to address his or her spouse about the Collaborative Process.
5. Engaging in role-play with your client may help him or her figure out the best way to talk with the spouse.
6. Providing your client with statistics from the International Academy of Collaborative Professionals or other organizations can help your client persuade his or her spouse that the Collaborative Process works the vast majority of the time.
7. Give your client names or lists of other Collaboratively-trained attorneys to provide to his or her spouse.
8. Ensure your client has materials on Collaborative Practice that can be shared with his or her spouse.
9. Consider whether your website portrays you as an aggressive litigator or a peacemaker. If the latter, suggest that your client ask his or her spouse to look at your website.
10. Enlist the help of people whom your client's spouse trusts, such as an accountant, therapist, or clergy, who have likely seen the devastating effects of protracted litigation.

11. Think about whether you are comfortable with (and your jurisdictional ethics permit) meeting both spouses for a consultation, so they can both hear about the Collaborative Process at the same time. Make sure to be clear that you can only represent one spouse, and that the purpose of the consultation is only to talk about process options, not to give legal advice.
12. Consider your tolerance for working with nonCollaboratively trained attorneys in a Collaborative Process. Determine whether you have any requirements in this scenario, such as the use of a seasoned mental health professional.
13. If a case is open and the spouses have been going through the litigation process, inquire as to whether the other client and attorney are open to a litigation freeze.</BLN>

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<TX1>Website: < EOCURL>http://theccdm.com/

Excerpt from Mosten, F., and Cordover, A. (eds.), *Building A Successful Collaborative Family Law Practice* (ABA 2018)

<CHN>Chapter 13

<CHT>Developing a Range of Collaborative Models: One Size Does Not Fit All

<CHAU>Ronald D. Ousky

<H1>Understanding Collaborative Practices' "One Rule" as the Core to True Interdisciplinary Solutions

<TX1>The great strength of collaborative practice is its solid core, which can be pivoted in many directions and opens the door to multitudes of ways of true interdisciplinary practice. The best way to understand how this works is to start by understanding what lies at the core of the Collaborative movement.

<TX2>The single defining feature of collaborative practice is that, based on written agreement, it involves two (or more) lawyers who must withdraw if the process is terminated by a client or attorney (or if a spouse initiates contested court action). This intentional limitation of the role of the attorneys ironically redirects the attorneys in a meaningful way; it helps clients understand the value of engaging mental health professionals and financial experts on their team.

Once that principle is understood, the clients are poised to work with financial experts and mental health professionals to help them find deeper resolution to their most important issues. The limitation of the role of the lawyers opens the door to creating a greater role for other professionals. In the absence of a lawyer disqualification agreement, clients naturally gravitate toward legal-centric solutions believing, when things get difficult, that their lawyer will be able to "solve the problem" by showing the other party that they are right and that they would prevail in court. Threats and actual court filings are the next step in gaining leverage to persuade the other party. This gravitational pull has, for many decades, caused divorcing clients to lose sight of the very basic fact that true resolution of family conflict has very little to do with law. Families are far more

likely to find durable and meaningful solutions to their family issues by focusing on interpersonal, parenting, and family issues than on legal solutions.

This principle has been proven countless times during the first 25 plus years of collaborative practice. Although much of the divorce world has stepped into some form of interdisciplinary practice, working with full interdisciplinary teams is far more likely to happen in Collaborative cases because the value of legal-based solutions is minimized from the beginning.

<H1>Slowing Growth by a Rush to Orthodoxy

<TX1>Although this one rule has led to an explosion of interdisciplinary teaming in the collaborative world (see Chapter 12 on teaming), the zeal about the impact of these teams has, ironically, led to some significant delays in the growth of collaborative team practice because of a rush to orthodoxy.[39]

<TX2>Because collaborative practitioners have developed various "team models," it has been tempting to promote a particular model as the one true way to practice. This rush to find a standard way to assemble Collaborative teams has sometimes slowed the growth of collaborative practice and, unwittingly, has slowed the growth of teaming. Thankfully, we are now moving into a new era of innovative client centered teaming which, if embraced, will lead to the next great surge in collaborative team practice.

Before explaining this new model, let us step back and examine many of the team models that have evolved in the Collaborative world during the past two decades (see Chapter 11 for a discussion on facilitating meetings in the various models).

<H1>Evolution of Collaborative Methods

[39] *See also* Forrest S. Mosten & Lara Traum, INTERDISCIPLINARY TEAMWORK IN FAMILY LAW PRACTICE (Family Court Review, July, 2018).

<TX1>The concept of collaborative teaming first evolved, under the name "collaborative divorce," by a group of innovative professionals in California. Their model of team divorce involved a financial neutral, two coaches (one for each spouse), a child specialist (if there are children involved), and an attorney for each party.[40] This model is still practiced in many communities but, overall, currently represents a relatively small percentage of the collaborative cases conducted worldwide.

<TX2>The first significant variation of the California team model was the "one-coach model" that originated in Texas. In the original one-coach model, a full team was generally comprised of one coach, one financial neutral, two attorneys and, where appropriate, a child specialist. The Coach, in this model, generally appeared at all the core meetings and usually took on the role of case Facilitator. As this one-coach model has evolved, some communities have adopted several variations. For example, some communities that have adopted this model do not utilize a child specialist, at least as a regular part of the team. Some practice groups have expanded the idea of neutral coach to "neutral facilitator" to include neutrals who do not necessarily have certification as a mental health professional. In addition, many communities have also adopted the term "family specialist" to describe a mental health professional who can perform the duties of the child specialist and the coach (see Chapter 16 on this expanded role of child specialists).

<H1>"Full-Team" Models, the "Lawyer Model," and Other Myths

<TX1>Although many variations of these models have evolved since the turn of the century, there has been a tendency to define all of these iterations as representing either a "full-team" model or a "lawyer model." Both phrases tend to be true misnomers, and it is unclear what either of these

[40] For an explanation of how these roles are typically defined in Collaborative cases, *see* http://www.ousky.com/collaborative-team-practice.

terms mean. Sometimes, the "full-team" models have involved very limited teams and sometimes the "lawyer model" involves teams that include two mental health professionals and a financial neutral. The phrase "full team" is often just a phrase that suggests the engagement of the particular type of team that is common in that community. For example, in Minnesota, I have observed cases that involved two attorneys and a child specialist as being described as less than a full team and therefore, by default, an example of the "lawyer model" because of the absence of a coach. At the same time, in parts of Florida, I have observed cases involving two lawyers and one neutral facilitator as a "full team," notwithstanding the absence of a child specialist or a financial neutral. <TX2>In reality, although most communities are quick to defend their brand of teaming, the type of teaming that exists in each community has largely been a function of the local key leaders. States such as Minnesota, which had very strong financial experts and child specialists at the time they started collaborative teaming, understandably developed team models that focus heavily on those roles. Similarly, states such as Texas, which had strong neutral mental health professionals leading their interdisciplinary movement, place a strong emphasis on the role of the neutral coach or neutral facilitator.

Building on the strengths of strong professionals in any community has many wonderful benefits and allows teaming to take root more quickly. However, as patterns set in, it is easy to begin to think of collaborative practice in a narrow way that can inhibit the growth of collaborative practice.

<H1>The Search for the "Best" Model

<TX1>Although it is natural for professionals to want to find the best way to practice, the "best way" may be to avoid getting locked into any particular pattern. Just as each family is different, their needs (including their economic abilities) will differ. The ideal collaborative model is the one

that can adapt to the needs of each family—not only in in the selection of the team members, but in the degree to which each team member is engaged. Divorcing couples are faced with a series of crucial decisions, made over the course of several months, that will impact their family for many years—maybe even for generations. A fully flexible process should be designed to help each family determine who needs to be at the table to help them make the best decisions throughout this time.

<TX2>In almost all cases, the decision about who needs to be present will depend on the circumstances. Most couples have the capacity to make some decisions, such as the division of household goods, with little or no professional assistance. At the same time, there are many couples who face difficult decisions involving a complex intersection of emotional, financial, parenting, and legal decisions who would benefit from having a full range of professionals "at the table" during these crucial times. In between those two broader parameters are situations in which couples may need more limited professional help.

For example, in Minnesota, most of the parenting decisions in a collaborative case are made in the presence of a child specialist, coach, or family specialist, with little need for direct involvement by the attorneys or the financial neutral. When addressing the financial issues, many couples work with a financial neutral alone on many preliminary "information gathering" issues, then bring in attorneys and/or coaches when they are ready to address the more difficult financial decisions (see Chapter 15 on working with a financial neutral). Because we often have all the professionals' offices in the same building as part of a collaborative executive suite,[41] we are even starting to bifurcate the meetings so that the parties can spend a portion of the meeting with a financial neutral or coach with the attorneys either being available "on call" or scheduled to come

[41] *See* http://www.collaborativeallianceinc.com.

in for just a portion of the meeting. Staying "light on our feet" in adapting the professional support to each family allows us to make sure they have the support they need when they need it.

Understandably, because we do not always know how a meeting will unfold, it is tempting to err on the side of over inclusion by having all professional disciplines available at every meeting. However, this overinclusion is simply not affordable for many families. Insisting on adding professionals that cannot be afforded can send clients shopping for a more flexible process. In addition, having an excess number of people in a room, even when it is affordable can, on occasions, overwhelm the parties and damage the level of intimacy needed to help them bring their best selves to the table.

The idea of careful selection of meeting participants (as opposed to automatic adherence to a set protocol) may seem lawyer-centered to collaborative professionals who assume that the excluded professionals are more apt to be the mental health professionals than the attorneys. However, that is not what is being suggested at all. Indeed, as the prior examples show, we are increasingly finding that, in a carefully designed collaborative team case, the attorneys can be excluded from many of the meetings (or portions of the meetings), thus freeing up resources for the clients to work with the mental health professionals or financial neutrals. For example, there can be some cases where the parties can have most of the core meetings with the financial neutral and bring in the attorneys solely for those meetings (or portions of meetings) where attorney assistance is helpful. Similarly, many parenting and communications issues can be addressed with a child specialist and/or a coach with very little attorney involvement. The key is to arrange each meeting around the needs and resources of each family in resolving the issue at hand.

<H1>Fear of Reducing the Role of Mental Health Professionals.

<TX1>A significant factor in the rush to orthodoxy of a "full-team model" was the fear that, in the absence of a full-team model, the role of mental health professionals would be lost. I fully understand that fear and agree that the absence of mental health professionals in many collaborative cases is a significant problem. I strongly believe that the true value and "brand" of collaborative practice is not that we settle cases (all processes can make that claim), but that we help families find enduring solutions and deeper resolution. Having mental health professionals on the team increases the likelihood of getting better outcomes. Having finally found a process that engages mental health professionals, the fear that we might lose that great advantage is understandable. However, as our clients often find, strategies borne out of fear often backfire. That is precisely what has happened in the collaborative movement.

<TX2>In the early stages of team practice, "full team" generally meant three mental health professionals. The Texas one-coach model initially reduced the "full team" to two mental health professionals; now, in communities that practice that model without a child specialist, a "full team" consists of only one mental health professional. Indeed, where the neutral coach is defined as a neutral facilitator (a role that does not necessarily require a mental health professional), we now have full teams that do not include any mental health professionals. So, the strategy of insisting on "full teams" may have, ironically, led to the diminishment of that vital role. The hope is that a flexible family-centered approach will lead us back to situations where we can engage two or three mental health professionals when the needs of the family compel that team structure.

<H1>Flexible Team Collaborative Models

<TX1>As these models emerge, there is a question about naming this new concept of collaborative teaming. Before I discuss a label for this concept, I do want to address some concerns about the idea of giving names to these models. Although it is helpful to have shortcuts (such as names) to

help us understand what we are describing, we need to be careful to avoid the risk that naming will create unnecessary divisions. For simplicity, we have typically described the various models with names such as "full team model" or "lawyer model." These names are, of course, inadequate and, I would suggest, unnecessarily divisive.

<TX2>I am inclined to describe the newly emerging model as either the "customized model" or, better still, the "client-centered model" because it determines the construction of the team based on the specific needs of each family rather than a predetermined formula. However, I realize that most professionals believe their approach to be truly "client-centered" and I would prefer to avoid suggesting anything to the contrary. Consequently, solely for the purpose of this article, I choose to describe this emerging model as the "flexible team model."

In the flexible model, the professionals work with the clients to determine 1) *who* needs to be at the table and 2) *when* they need to be present. One of the concerns this raises is determining which professionals help the clients select the team. In my experience, the decisions regarding which professionals to use depends on how the clients entered the process. Historically, clients have started with attorneys and, as a result, attorneys have been the first professionals on hand to help clients make the initial teaming decisions. However, as the various interdisciplinary models become more popular, clients are increasingly entering the collaborative process by first selecting a financial neutral or mental health professional or even a mediator. (For an expanded discussion on the entry points of professionals, see Chapter 17; on the use of a mediator, see Chapter 14). In those cases, I have found, the clients have relied on the financial or mental health professional or mediator to help them determine how and when to bring in the other professionals. Although it is true that, for the case to be defined as a collaborative case, the clients must ultimately retain collaborative attorneys, it is possible, in some instances, for this to be later in the process and for

the lawyer role to be reduced. Consequently, the flexible team model does not necessarily increase the role of attorneys. Indeed, I believe that as we get more skilled in adapting on cases, the number of hours spent on legal counsel in most collaborative cases is likely to be significantly reduced.[42]

The other primary concern with the flexible team model is that clients will often resist the addition of crucial team members and that, in our eagerness to please the clients, we will give them less help than they truly need. I understand and appreciate that concern and I believe it raises one of our most important skill development challenges. As stated above, the true value of collaborative practice lies not just in settling cases but in helping clients achieve deeper and more lasting resolution. Consequently, skilled and conscientious practitioners are inclined to adapt a "presumptive full team" approach that assumes that clients need support in all areas but adapts the case to match the realities of their situation.

<H1>Conclusion: From Compelling Teams to Creating Compelling Teams

<TX1>The future of collaborative practice lies in the hands of our clients and in our ability to help them achieve remarkable outcomes. If we create compelling teams that are designed to meet all the needs of each family, interdisciplinary collaborative practice is likely to grow to new levels. What we have failed to acknowledge is that, in many situations, rigidly compelling full teams has sometimes led clients to seek out other alternatives. Mediation, for example, although increasingly interdisciplinary, does not compel any particular team structure; thus, clients may prefer an out-of-court model that allows them to make independent choices. I know many collaborative attorneys who are also mediators and, for reasons that escape me, require "full teams" in collaborative divorce but not in a mediated divorce.

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[42] See Forrest S. Mosten & Elizabeth Potter Scully, UNBUNDLED LEGAL SERVICES: A GUIDE FOR FAMILY LAWYERS (2017).

<TX2>Collaborative practice, by limiting the role of the attorneys, opened the door for clients and professionals to see the world of divorce conflict resolution in a new way. This has quickly led to various versions of interdisciplinary teams, which has been the true strength of the collaborative movement.

Collaborative Practice is about giving families the opportunity to achieve truly remarkable outcomes. The most remarkable outcomes generally happen when clients can work with a wide variety of team members. Helping clients get the value of professional teams must be balanced with the resources available to those clients. One way to help clients achieve the best of all worlds is to continue to develop flexible models of collaborative teaming that help clients get the best value as they plan their future. Looking to the future, we need to make collaborative team practice accessible to families of all incomes. This can be achieved through flexible teaming and creative planning on behalf of each family. If we can avoid the rush to orthodoxy and help each family assess their needs, we will be able to continue to create teams that are both remarkable and cost effective.

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<BT>Practice Tips

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1. As long as you are following the "one rule" (each client has an attorney who must withdraw, pursuant to a written agreement, if the process is terminated or a spouse initiates a contested action), then you have a collaborative case, regardless of other features (or lack thereof).

2. The disqualification clause should not be feared by professionals who are afraid to explain it to clients; rather, it should be embraced as an opportunity to empower clients to think beyond the law and what would happen in court.
3. Consider whether a "rush to orthodoxy" in models has negatively impacted your community's ability to generate collaborative cases.
4. Clients will appreciate that you are tailoring a collaborative team for them rather than putting them in a cookie-cutter model.
5. Various flexible options may be better available if there is a collaborative executive suite in your community, where professionals of the various disciplines share office space or work in the same building.
6. Determine whether it is essential to have every professional at every collaborative meeting, or whether it makes financial and other sense for less than the full team to attend.
7. If the full team needs to attend, discuss whether each professional needs to be at the entire meeting, or whether a professional will be needed for only a portion of the meeting.
8. Flexible teaming need not be attorney-centric; it may mean an expanded role for mental health and financial professionals, and less of a role for lawyers.
9. Attorneys should consider whether to offer "unbundled collaborative services," where the clients work entirely with mental health and financial professionals or mediators and the attorneys only come in the end to help write up or review agreements and ensure the divorce is finalized. </BNL>

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