

COLLABORATIVE PRACTICES: interaction between areas

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Multidisciplinary practice in Family Law seeks a praxis that can encourage the individual to find their own path to well-being, when seeking the professional counsel of an attorney in times of crisis to resolve their problems.

We have long witnessed judgments that mark the end of legal proceedings yet fail to resolve the clients' problems, whereby the conflict prevails in their lives. This prompts the search for alternative approaches that can yield truly effective outcomes.

Moreover, particularly in the field of Family Law, we see a situation where the legislation cannot keep up with the social evolution of families, calling for the use of alternative techniques for the resolution and prevention of litigation.

Nowadays, the notion that conflict is inherent to human existence is widely recognized and, therefore, it is important to elect the best way of dealing with it, particularly for Law professionals.

As accurately noted by Mara Caffé, “Notwithstanding the specificities of Psychoanalysis and of Law, we can state that both areas entail a certain procedure to handle conflicts, or rather, a certain processing of conflicts, despite having different start and end points. Individuals that resort to a court of law or seek psychoanalytic therapy, adopting the most commonly used parlance in each case, do so with the expectation of encountering a solution to their disputes. Therefore, the notion of conflict is highly central to both Psychoanalysis and Law, largely defining the subject matter of these practices: psychic conflict and legal conflict, respectively”¹.

The use of better ways of conflict resolution has become more commonplace in recent decades because received experience allows us to clearly see - and accept - that neither attorney nor judge alone is able to deduce what is best for the client. Furthermore, this conclusion is down to the client who, as the protagonist of their own life-story, should be provided with the means of deciding their choices and making decisions that take into account their wishes and those of other parties involved.

Thus, Collaborative Practices emerged in the 1990s in the United States. Stuart Webb, a lawyer who tired of drawn out, exhausting and fruitless court battles, founded a group of lawyers and judges dedicated to working in a collaborative, non-litigious way.

Collaborative Practices are a non-adversarial method of conflict resolution where each client is represented by an attorney duly trained on the technique

¹ CAFFÉ, Mara. *Psicanálise e direito*. São Paulo: Quartier Latin, 2ª ed., 2010, pg.165.

and, together, all sign a Participation Agreement pledging to negotiate transparently and promising not to litigate throughout the procedure, under pain of interruption of the process with withdrawal of the professionals. The attorneys undertake to resort to the Law Courts only to ratify accords or take legal measures previously agreed between clients on the matter being negotiated. Thus, the clients have an environment in which they can safely converse, having both attorneys as allies in crafting an agreement which benefits the whole family.

It is recommended that two coaches join the Collaborative Team, mental health professionals similarly trained for the task, one for each client, to assist in the subjective processes during the negotiation, and also to help the attorneys identify the true interests of the clients.

Both Mediation and Collaborative practices are based on the principle of good faith which can be construed as trust, loyalty, honesty, sincerity and fidelity. In the Practices, the term “transparency” is adopted to denote this commitment assumed by the whole team adopting the procedure, being an indispensable condition for hiring them. By the same token, breaching of this commitment is grounds for halting the procedure with compulsory withdrawal of the whole multidisciplinary team, that will no longer be able to attend these clients on family issues.

The two methods also produce the same empowering effect in the participants, who feel able to analyze and resolve their own conflicts and lead their lives in a responsible, cooperative and supportive manner.

The multidisciplinary approach to assist individuals in distress, showing respect for their rights, proves essential if we intend to promote effective care and respect, especially regarding family matters. We, attorneys, no longer wish to speak for the clients, but want to be alongside them, as partners and consultants as opposed to representatives, providing them with the opportunity for direct narrative, assuming their role as protagonists.

Moreover, unlike in traditional legal disputes, the multidisciplinary approach respects people’s time, pace and the possibility of establishing timing which closes the gap between issuance and reception of discourses.

Thus, in collaborative practice we have the opportunity to assist our clients but, above all the family as a whole, in identifying values, true interests and priorities, seeking creative, inclusive, mutually beneficial solutions, with an eye to the future, participating in this composition, creating a new story, weaving a new fabric with which to dress themselves, and at their own pace.

Collaborative Practices also provide the chance to form an interdisciplinary team, including a specially trained mental health professional to act as a coach for the clients. This function should not be confounded with that of an individual therapist, in as far as it seeks to directly help the client to understand and handle the emotions arising from the dispute, identify and prioritize topics, interests, needs and values of those involved; to develop and

strengthen resources and abilities; to understand the communication dynamics with the other party; to grasp and deal with the issues related to the others involved (children, partners, employees); to resolve the pending matters that interfere in an effective co-parental relationship; to build a workable and collaborative parental plan; to prepare for dialogue and negotiation with the other party.

Besides engaging a *coach* for the clients, when children are involved, there is the possibility of hiring a “*coach for the children*”, a therapist specialized in children and adolescents, who joins the team to act as spokesperson for the children.

It is important to highlight that Mediation and Collaborative Practices require the will and objective and subjective means to handle the job. Neither the mediator, nor the professional team in Collaborative Practices, can act if the clients fail to engage in the procedure as active participants. As Freud did in the past, we also have to show “the difficulties of our method, the time this will require, the efforts and sacrifices that must be made and with regard to success, state that this cannot be guaranteed, because it hinges on the behavior, understanding, obedience and persistence of the patient”² - the client, in our case.

In the interaction between Law and Psychology practitioners, and other similar areas, the long reach of these practices becomes clear, involving a person-centered approach based on dialogue. This is necessary because it promotes clear and attentive expression, and likewise empathic and inclusive listening, being open and receptive to new perspectives, while respecting differences. Family lawyers, with the aid of a Mental Health professional, should give the subject a say, devoting time to listen so that a creative path to consensus can be built and, in this process, the client has the chance to hear themselves as well as to be heard.

Find out more about Collaborative Practices in Brazil at www.praticascolaborativas.com.br.

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² FREUD, Sigmund. Conferências introdutórias à psicanálise. IN: Complete Works, vol.13. SP: Companhia das Letras, 2014, p.19.