

# Prologue

## Making Collaborative and Non-Court Family Practice Your Day Job

Forrest S. Mosten and Adam B. Cordover

When involved in building a career, we often feel alone—as if our challenges to find meaning, colleagues, and financial success are unique and special to each of us.

You may be reading this book through any of the following lenses:

- You want to learn more about Collaborative practice.
- You currently are engaged in Collaborative practice and want to increase the amount of collaborative work that you currently have in this field.
- You currently are engaged in Collaborative practice and want to replace income from litigation with services that supplement Collaborative work, such as mediation, serving as a client mediation consultant/representative, or doing more work servicing self-represented litigants.
- You have been trained in Collaborative practice and want to get into this area of work and reduce the amount of time in the world of litigation.
- You are a trained mediator who wants to expand into Collaborative practice and work more with Collaborative professionals.
- You want to offer limited-scope services and want to increase this area of your practice.
- You want to expand non-court work and replace income from your current practice with revenue from peacemaking work.
- You want 100 percent of your income to come from Collaborative practice and other peacemaking work

Most family professionals are in a state of positive excitement once they complete their first training in Collaborative practice or mediation. The possibility that we can use our professional training to become a bona fide peacemaker to help families can be very alluring. However, there often comes a

point where this goal may seem to be a pipe dream. Many people become overcome by the fear that the rush in the training room will not prepare you to make a living from non-court work.

You *can* make Collaborative practice your day job. Whether you are looking to add non-litigation services to your current practice or you are seeking to become a full-time peacemaker, this book gives you cutting-edge practice tips and provides you with the tools you need to make a living from peacemaking.

Although the experts in this book offer strategies to improve your craft as a peacemaker, this is not a book just about the concepts of Collaborative practice. This is also a book for those who have invested the time and money into Collaborative training and have the desire to build their practices but may be paralyzed by fear of not being able to make a living by offering Collaborative services. This book is also directed toward people who are already offering Collaborative services but face real challenges in getting Collaborative cases or who have not been able to turn their passion into bottom-line revenues to support their families.

## **FINANCIAL SELF-SUFFICIENCY IS ESSENTIAL FOR OUR OWN PRACTICES AND PERSONAL LIVES**

Neither of us has a business education or specialized training in practice management or marketing. We love our work as Collaborative lawyers and mediators and thrive on making our living from peacemaking work. To accomplish this, we need new clients and invitations from other Collaborative professionals to join their teams to handle their new cases.

We have managed to turn our practices into profit centers that generate income that equals or exceeds the income we made before giving up litigation and devoting ourselves full time to peacemaking work. From our experience, we both realize that you cannot make a living simply by being an active card-carrying member of a practice group and the International Academy of Collaborative Professionals (IACP) or placing your name on referral lists for unbundled services, mediators, lawyers supporting mediation, and preventive legal wellness. Your financial and professional future depends on your ability and willingness to communicate your expertise and to differentiate your own practices from others in your community. In short, you need to find a way to get on the audition list of colleagues and other referral sources so that you have the opportunity to meet with potential clients and translate those meetings into paid work.

## **OUR FINANCIAL SELF-SUFFICIENCY IS VITAL TO THE FUTURE OF COLLABORATIVE PRACTICE**

The table is set for you to become a successful Collaborative practitioner. Due to the efforts of the Collaborative community over the past 25+ years,

Collaborative practice has become known as an effective and cost-saving method for families to resolve their conflicts. We now have the Uniform Collaborative Law Act/Rules, which legitimizes Collaborative practice in the eyes of judges, legislators, and other leaders of society and has been enacted by more than 15 states. Research and reports of positive consumer satisfaction has led to Collaborative practice becoming an accepted and recommended process for individuals and families.

The reality is that to practice collaboratively, you will need to generate revenue that exceeds your practice expenses. There are virtually no paying staff jobs in our field. You cannot realistically expect to receive any governmental or foundation grants to subsidize your own practice. Each one of us must bring in more money than we spend. Therefore, if you want to do this work and provide for your family, your practice must function as a small business.

Here's the rub: The skills and personal attributes so important to being a competent peacemaker are very different from being a small business person or self-promoter and entrepreneur. You like to help others (sometimes to the point of selflessness), are a quiet and attentive listener, and do not like to toot your own horn. Very few peacemakers are natural salespeople. Even fewer of us have been trained in business or are very interested in the business aspects of our practices. If we had our way, we would just serve clients that are already sitting at our round tables. However, we won't have clients unless we take positive and proactive business steps to let people know what we do and how we do it well.

If you do not devote your attention and energies to building your practice, unless you are independently wealthy or someone else (a spouse or parent) offers to pay your bills, you probably will not practice collaboratively for very long. You will either leave the field or relegate your Collaborative work to a smaller percentage of your professional time. If you are a lawyer, you may continue to litigate even though your heart calls out for a different professional life. If you are a mental health professional, you may continue to participate in litigation-driven services, such as evaluations or the financial security of managed care. Because it takes many years of training and practice to hone our specialized skills as Collaborative practitioners, if we leave the field to make a living in more profitable areas, each person who gives up collaborative practice deprives courts and the public of another available Collaborative professional to meet the conflict resolution needs of our society's families.

We both have concluded that it is imperative for Collaborative professionals to learn how to financially sustain their own practices. In addition to existing books and training, there is a need for current successful collaborative practitioners to share their wisdom and mentor the rest of us in building successful practices. This book is dedicated to this mission.

## **WHY WORKING EXCLUSIVELY OUT OF COURT CAN INCREASE YOUR PROFITABILITY AS A FAMILY PROFESSIONAL**

### **Other Professionals in Your Field See That You Are No Longer a Competitor**

If you are a family lawyer involved in litigation, you are involved in a rare situation: You find yourself advocating against and competing for business with most of your colleagues. This is a feature of family law practice that does not occur in most other fields. In civil litigation, defense lawyers generally litigate against plaintiff lawyers. They compete with other defense lawyers for business but do not frequently litigate against them. The same is true in criminal law with prosecutors and defense lawyers or in landlord-tenant disputes, creditor-debtor matters, or in most fields.

Family lawyers represent both husbands and wives, and they so are litigating against virtually everyone! Although most lawyers try to maintain a professional distance and not personally get over involved with the cause of their clients, family disputes are very personal between the parties and lawyers sometimes take on the emotions of their clients. Too often, legal positions devolve into personal conflict between lawyers. Some lawyers can shake this off at the end of a case, but these tiffs may sometimes linger for years. Not only are friendships put at risk, but the vestiges of past cases can interfere with productive cooperation in professional activities and icy interactions. Such interpersonal problems rarely lead to referrals.

If you become a full-time out-of-court lawyer, over time, your relationship with past litigation foes heal. The other family lawyers in town know that they will never have to see you again in a courtroom. They also begin to realize that you are not vying to compete with them for litigation work. The opposite is true: You will begin referring them clients who need or want litigation help because you no longer offer those services. Former competitors become valued referral sources.

### **Professionals in Other Fields See You as a Resource Who Is Trained and Dedicated in Peacemaking Work**

Have you ever tried to find the right doctor? It is difficult. People going through family conflict also have difficulty finding the right lawyer. Very few consumers know the differences among those family lawyers who have collaborative training and those who do not. If someone has a client or friend going through family reorganization and they want a private nonadversarial and consumer-friendly professional, they will look for those professionals who are trained and committed to Collaborative practice. When that person

is selecting from a list on the IACP website ([www.collaborativepractice.com](http://www.collaborativepractice.com)) or a local practice group website, who do you believe will get the first call: a) a lawyer or mental health professional who works part-time as a Collaborative practitioner and most of the time in the litigation world or b) someone who dedicates himself or herself fully to consensual dispute resolution? Specialization and commitment to Collaborative Practice are recognized.

Referral sources prefer competent and affordable professionals who “walk the walk.” Not only will your focused dedication be perceived as bringing increased knowledge and insight to the Collaborative process, but such perception will be true. It is very difficult to be a specialist in both litigation and peacemaking services. Instead of attending half of your continuing education in litigation-type work and half in mediation and Collaborative practice, if you devote 100 percent of your time to learning negotiation and peacemaking concepts, you will be a better peacemaker and interest-based negotiator. Referral sources understand this and will vote with their feet toward your office door.

### **Clients Appreciate Your Commitment to Be a Full-Time Collaborative Practitioner**

You are seen as different from other lawyers, mental health professionals, or financial professionals in the community who merely “add-on” Collaborative work. Unlike those professionals who do both types of work, you are not consumed by deadlines or other pressures from the court system. You are in your office to answer your clients’ calls. Furthermore, litigators often treat their Collaborative work with less urgency and priority. A potential client knows that Collaborative practice is your life’s work, and that dedication breeds confidence. Clients see and feel the difference between those professionals who “love” Collaborative work but do it rarely and those who dedicate their careers and lives to offer Collaborative services.

### **You Are Free to Concentrate on Doing What You Enjoy—And Doing It Better**

In addition to trainings, you will not split your time or practice building budgets, selecting which conferences to attend, which books to purchase, what study groups to attend, or how to focus your marketing efforts. You still can register for litigation oriented courses if you choose to, but most of your training (and much is needed) will be to be a more competent Consensual Dispute Resolution Provider.

### **Overview of Collaborative Practice**

If your primary service product will be Collaborative practice, it is essential that you clearly understand the underlying concepts and various models of

the Collaborative services that you wish to offer. The following describes the essence of Collaborative practice:

1. *Values and Principles.* Collaborative divorce practice professionals share the following common set of values and principles:
  - Respect and dignity for the other client and other professionals
  - Direct and open communication with the other client and professionals
  - Voluntary and full disclosure of relevant information and documents necessary to make agreements
  - Commitment to the healing of the family
  - Use of interest-based negotiation to try to meet the needs of both clientsAs you will see throughout this book, there are many models of Collaborative practice. Some Collaborative lawyers always work with mental health coaches, some will work occasionally in a “lawyers-only” situation, whereas others never work with interdisciplinary partners. When using coaches, some teams have one neutral coach, whereas others use two client-aligned coaches. Sometimes mediators are used; other professionals have a neutral mental health or financial professional serve in a mediator/facilitative/team manager role. Although these models differ, they are all based on these values and principles.
2. *Clients are seen as the key players in resolving their own problems and the legal, relationship, and financial issues involved.* Clients are encouraged and coached to communicate effectively with the other client. Professionals are not seen as buffers between the spouses but as client partners and supportive resources for client-centered decision making.
3. *Attorneys and clients are committed to refrain from threatening or taking court action.* The attorney disqualification clause is a “safe container” for working out all issues using interest-based negotiations without the leverage and pressure of court proceedings. Court is seen as a last resort with protocols developed to help clients not go into the litigation system, which often has escalated and harmful side effects for the entire family. Collaborative practitioners ascribe to the mantra: Every day out of court is another day out of court.
4. *Communications and documents from the Collaborative process are confidential and inadmissible in court.* This assurance of privacy is another benefit from “the safe container.” Clients are encouraged to be generous in their negotiations and obtain helpful evaluative advice from professionals without the fear that such communications could be later used in a binding adversarial court process.
5. *Clients and Collaborative divorce professionals sign a participation agreement.* This agreement contains a disqualification clause that prevents any

- Collaborative professional from representing their client against the other spouse in an adversarial court hearing.
6. *Collaborative professionals have specialized training.* In addition to basic training necessary for admission to most Collaborative Practice Groups, most Collaborative professionals participate in ongoing training in their groups, conferences, and in ancillary fields such as mediation, financial, and family communications.
  7. *Collaborative professionals are committed to an interdisciplinary team approach.* Although Collaborative law requires the involvement of two lawyers, these lawyers understand the value of involving either a neutral mental health coach or two aligned mental health coaches, a neutral financial professional, child specialists, and other professionals as needed to provide a team that meets the needs of the family.
  8. *Collaborative divorce is a process favored by judges and courts.* In many jurisdictions, a Collaborative approach is endorsed by judicial officers. Such support can result in having collaborative matters immune from other court management, expedited signing of Judgments and Decrees, and other process consistent with the Collaborative process.
  9. *Collaborative practice favors early intervention.* Just as early use of mediation has been shown to better meet the needs of families, people benefit from starting a Collaborative approach as early as possible—often before a formal separation of the parties. However, even if a family has initiated court proceedings, it is possible to divert the matter to a Collaborative process at any time.
  10. *Collaborative practice is consumer-oriented one-stop shopping.* With the availability of needed professionals to address the legal and nonlegal needs of the family, clients may never need to appear in court, either at the time of a divorce or over time as parenting and financial situations change. The investment and trust of the Collaborative team by the family can be amortized in modifying agreements within the “safe container” as needed.

Clearly, these ten points are just the highlights of Collaborative practice. As you read through the table of contents and then the chapters themselves, you will begin to fill in this brief outline of points with the detail and nuance that makes this area of practice attractive to families that want more control over their lives maintain privacy, minimize conflict to themselves and to their children, and reduce costs.

The following is our preview of the book’s chapters that explore how you can become a competent Collaborative practitioner and offer proven strategies to increase your income while offering needed help to your clients.

- **Chapter 1:** *David Hoffman, “Lawyers as Peacemakers. Really?!? Yes, Really.”* In this chapter, David discusses his history as a litigator and why he decided



to become a full-time peacemaker. Although speaking only for himself, based on his career path and personal values, his insights may apply to you as well and be a template for your own decision making.

- **Chapter 2:** *Robert Merlin, "How Collaborative Practice Will Improve Your Profitability."* Attorney Bob Merlin was a veteran family trial lawyer before committing full time to Collaborative practice. His years of advocacy lead to the passage of the Uniform Collaborative Law Act in Florida. If you are a family lawyer who yearns to increase peacemaking work, Bob explains how Collaborative law will improve the profitability of your family law practice and give you more control and satisfaction in your life.
- **Chapter 3:** *Kevin Scudder, "Redefining Your Practice Signature and Creating a Profitable Peacemaking Practice."* Kevin Scudder is a national thought leader in the Collaborative movement. A family lawyer with more than 26 years of family law experience, Kevin offers structure and direction to a possible change in your career. He helps you develop and refine a viable practice signature that will take advantage of your own core life values, best personal attributes, and preferred services and models of practice, and helps you hone in on your target market.
- **Chapter 4:** *carl Michael rossi, "How Many Hats Can I Really Wear? Assessing Whether to Accept Both Litigation and Collaborative Work."* carl Michael rossi, from Chicago, is editor of *The World of Collaborative Practice Magazine* and longtime moderator of the Yahoo Collaborative Listserve. Trained as both a lawyer and mental health professional, carl Michael provides criteria and assessment tools on whether to accept both litigation and nonlitigation and, if so, how to maximize your financial and personal goals.
- **Chapter 5:** *Rich Grof, "Being a Client Leader: The Art of Gaining New Collaborative Clients."* Using his background in marketing and coaching small business clients, Rich offers a business approach to gaining, working with, and satisfying clients.
- **Chapter 6:** *Gary Drenfeld, "Effectively Marketing Your Collaborative Practice."* A veteran Collaborative mental health professional, mediator, and trainer from Ontario who maintains perhaps the best website in the field, Gary shares his experience in providing tips to build your practice by expanding and showcasing your talents and services.
- **Chapter 7:** *Zanita Zacks-Gabriel, "Creating Collaborative Office Space."* Zanita Zacks-Gabriel, chair of the Collaborative Law Committee of the Pennsylvania Bar Association, provides concrete suggestions on redesigning a traditional law office into a space conducive to support an active and consumer-oriented Collaborative practice.
- **Chapter 8:** *Brian Galbraith, "Integrating Technology into Your Collaborative Practice."* Leading Canadian lawyer and founder of Collaborative practice in Ontario, Brian Galbraith provides suggestions on integrating



state-of-the-art technology into your practice to support your Collaborative approach by better serving your clients more efficiently and at lower cost.

- **Chapter 9:** *Enid Miller Ponn, "Getting Buy-In for a Collaborative Approach from the Other Spouse and Attorney."* Enid Miller Ponn, who has practiced exclusively in non-adversarial dispute resolution for 15 years in Coral Gables, Florida, provides strategic guidance to help you work with the other spouse and other attorney to initiate a Collaborative case.
- **Chapter 10:** *Bev Churchill, "The First Client Meeting: Gateway to a Collaborative Case."* Bev Churchill, a family law attorney with 30 years of experience in Vancouver, British Columbia, provides structure and protocol for conducting successful initial consultations with clients that will provide informed consent and help enroll more Collaborative cases.
- **Chapter 11:** *Jeremy S. Gaies, "The First Joint Collaborative Meeting"* Psychologist Jeremy Gaies of Tampa, Florida, is co-author of *Mindful Co-Parenting: A Child-Friendly Path Through Divorce*. His chapter goes step-by-step through the mechanics of a successful first joint Collaborative meeting.
- **Chapter 12:** *Lara Traum, "Fine-Tuning Your Collaborative Team."* Author of articles with Woody on teambuilding and preventive conflict wellness, Lara Traum from Forest Hills, New York, explores the foundations of building an effective team by drawing on lessons from business, medicine, and the mental health field.
- **Chapter 13:** *Ronald D. Ousky, "Developing a Range of Collaborative Models: One Size Does Not Fit All."* Ron Ousky, co-author with founding Collaborative attorney Stu Webb of *The Collaborative Way to Divorce* and past president of the International Academy of Collaborative Professionals, discusses how flexible models can better meet the needs of families and provide more work for Collaborative Professionals.
- **Chapter 14:** *Elizabeth Potter Scully, "Mediation and Collaboration: Harnessing Potential Synergy."* Elizabeth Potter Scully, an adjunct professor at the University of California Los Angeles School of Law and co-author with Woody of the American Bar Association books *The Complete Guide to Mediation* (2015) and *Unbundled Legal Services* (2017), describes the intersection of collaborative law and mediation and how they may be further integrated in a variety of models.
- **Chapter 15:** *J. David Harper, "Traits and Skills of a Highly Effective Financial Neutral."* Financial Neutral David Harper, who is both a forensic accountant and a collaborative trainer in Florida, provides insight into how a financial professional can bolster a collaborative team and how financial professionals can be effective entry points for generating Collaborative cases.
- **Chapter 16:** *Kathleen Zumpano, "Collaborative Child Specialists: Traditional and Expanded Roles."* A full-time Collaborative mental health professional

from Vancouver, Washington, Kathleen maps out the use of a Child Specialist for mental health professionals considering that role and for other professionals to utilize child specialists as part of their Collaborative Teams.

- **Chapter 17:** *Nancy Retsinas and Susan J. Buniva (with Melissa Sulkowski), "Using Behavioral Health Professionals in Family Law" (with Practice Tips by Melissa Sulkowski).* Pooling their expertise from their experiences in Washington and Virginia, Nancy and Susan provide tips to lawyers and financial professionals on how to increase the use and effectiveness of mental health professionals in family law matters. Nurse and Licensed Mental Health Counselor Melissa Sulkowski, one of the founding members of the Collaborative Professionals of Northwest Pennsylvania, adds supplemental practice tips on expanding collaborative entry points for referral of new cases beyond lawyers through the active marketing by mental health professionals.
- **Chapter 18:** *Dennis Lerner, "Collaborative Marriage Planning."* Dennis Lerner, founder of the Collaborative Marriage Planning Institute in Syracuse, flips traditional collaborative family law on its head and describes an innovative method for collaborative teams to help couples plan for married life and lessen the likelihood of divorce and separation.
- **Chapter 19:** *Kimberly Stamatelos, "Modifying Existing Agreements with a Collaborative Approach."* Kimberly Stamatelos, co-founder of the Central Iowa Academy of Collaborative Professionals, takes a look at the special considerations and opportunities for collaborative practice in divorce post-judgment cases where collaborative practice was not initially utilized.
- **Chapter 20:** *Michael V. Fancher, "Avoiding and Handling Termination of the Collaborative Process."* Michael V. Fancher, a Harvard Law graduate, longtime Collaborative Practitioner in Seattle, and former member of the Board of Directors of the International Academy of Collaborative Professionals, explores how to avoid impasse in collaborative cases and how to effectively handle termination when it does occur.
- **Chapter 21:** *Sherrie R. Abney, "Civil Collaborative Practice: The New Way to Do Business."* Sherrie Abney, author of *Avoiding Litigation: A Guide to Civil Collaborative Law* and expert on civil collaborative practice, provides a compelling overview of the universe of collaborative cases available to professionals in non-family law matters.
- **Chapter 22:** *Brian Galbraith, "Collaborative Practice as a Business."* There are many successful Collaborative Practitioners throughout the world. Brian gives a personal tour inside his firm to show you step-by-step how he operates a successful Collaborative Practice.

Finally, we wrap up the book with a discussion of creating a plan for the next steps in building your collaborative practice.

The contributing authors are very different. They come from varied communities and experiences and sometimes use varied terminology. However, they all are leaders in the peacemaking community who are passionate about helping families and want to share their ideas so you can build your own successful peacemaking practice. The more families who have positive out-of-court experiences anywhere in the world, the more they tell others everywhere in the world, which leads to more peacemaking work for all of us—and important help for families.