

INTERDISCIPLINARY TEAMWORK IN FAMILY LAW PRACTICE

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INTERDISCIPLINARY TEAMWORK IN FAMILY LAW PRACTICE

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INTRODUCTION

For attorneys who engage in matrimonial practice, work is often performed by a sole practitioner. In representing clients, matrimonial attorneys generally work alone or, at most, interact with other attorneys within their own firm. Unlike other professionals, who have reaped rewards as a result of a commitment to team training, matrimonial attorneys are just beginning to work in deliberately constructed interdisciplinary teams.³

³ In this Article, we explore teamwork within matrimonial practice specifically, rather than teamwork within family law generally. Family law is a diverse field, and practice areas such as adoption, juvenile justice, truancy, and domestic violence already employ teamwork and interdisciplinary practice through various mechanisms, such as Problem Solving Courts. In these other aspects of family law practice, there is broader acceptance of interdisciplinary teamwork, and such teams are already in place within organizations such as the Bronx Defenders and the Southern Poverty Law Center. In focusing our article on matrimonial practice, we seek to address those practice areas that are devoted to asset division, child custody, child support, and spousal support. See Donald J. Farole Jr. Nora Puffet, Michel Rempel & Francine Byrne, *Applying Problem-Solving Principles in Mainstream Courts: Lessons for State Courts*, 26 JUSTICE SYS. J. 57 (2005), http://www.courtinnovation.org/sites/default/files/applying_ps_principles.pdf; RICHARD L. WIENER & EVE M. BRANK, PROBLEM SOLVING COURTS: SOCIAL SCIENCE AND LEGAL PERSPECTIVES (2013); New York State Problem Solving Courts Flyer, NYCOURTS.GOV, https://www.nycourts.gov/courts/problem_solving/PSC-FLYER4Fold.pdf; John Lande and Forrest S. Mosten, *Family Lawyering: Past, Present, and Future*, 51 FAM. CT. REV. 20 (2013).

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In other professional spheres, interdisciplinary practice and teamwork are integral to efficiency, client satisfaction, and career success. Members of the business world, from MBA students to high-level business executives, spend substantial time and money learning about team building strategies. They focus on honing skills related to team communication, collaborative strategic planning, navigation of complex dynamics and styles, and high stress joint decision-making. Healthcare teams have managed to improve services and clinical care by utilizing interdisciplinary assets to address complex health problems.⁴ They have streamlined medical approaches to emergency room triage and developed mechanisms for team-based diagnostic transparency and accuracy. During the latter part of the 20th Century, mental health professionals have realized that a closely-knit team of specialists can address the nuanced needs of mental health patients more successfully than solo generalists.⁵ Business executives, doctors, and psychiatrists no longer act as solitary professionals. Members of these fields have embraced teamwork, and professionals, patients, and consumers have reaped boundless rewards as a result. As matrimonial practitioners embrace teamwork in a similar fashion, families will be better served and professional satisfaction will increase.

In this Article, we shall strive to define the meaning of “team work” and highlight the characteristics of an effective team, drawing examples from the business, medical, and mental health fields. We shall examine how successful teams are built and explore the application of such approaches within matrimonial practices, offering recommendations for research and effective use of teams to help families that are facing conflict and reorganization.

I. Going it Alone: The Absence of Teamwork in Matrimonial Practice

Lawyers have been deemed the “agents of dispute transformation” as well as the principal agents who “maintain control over the course of litigation”.⁶ As such, lawyers generally develop autonomous modes of practice. They both evaluate their clients’ needs and hold their hands throughout the litigation process. They share information with clients, but are also often the ultimate strategic decision-makers. They are generally accustomed to having ultimate control, shaping disputes and client narratives in order to fit the needs of the “case” rather than shaping process options to fit the needs of the clients.

Despite these traditional characterizations, teamwork is in fact an inherent part of legal practice. The whole notion of being a “counselor at law” suggests that lawyers are tasked with listening, exploring options, identifying least invasive strategies, and helping clients select the most appropriate courses of action not just based on law, but also based on broader considerations,

⁴ See generally *Why Is Teamwork in Healthcare Important*, HRH GLOB. RES. CTR. http://www.hrhresourcecenter.org/HRH_Info_Teamwork (last visited Aug. 17, 2017); Canadian Health Services Research Foundation. *Teamwork in healthcare: promoting effective teamwork in healthcare in Canada. Policy synthesis and recommendations*. CHSRF (2006).

⁵ See David P. Ryan, *A History of Teamwork in Mental Health And Its Implications for Teamwork Training and Education in Gerontology*, in EDUCATIONAL GERONTOLOGY (1996), <http://rgp.toronto.on.ca/PDFfiles/TeamHistoryPsych.pdf>.

⁶William L.F. Felstiner, Richard L. Abel & Austin Sarat *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming...*, 15 L. & S. REV. 631 (1981).

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including relationships, process costs, time, and emotional health.⁷ Matrimonial attorneys have a unique responsibility to act as a family's legal wellness provider, evaluating the long-term health of a family and treating that family's needs in a holistic fashion.⁸ An "agent of dispute transformation" cannot truly practice in a vacuum, and the legal wellness provider cannot act as a contrarian advocate, attacking symptoms without identifying long term management protocols. Lawyers need teammates, teams, and the skills to more fully help their clients and their families.

II. WHAT IS A TEAM: FOUNDATIONS FOR THE MATRIMONIAL PRACTICE CONVERSATION

In order to inform our conversation regarding teamwork in matrimonial practice, we must first explore teamwork generally. The sections that follow trace the presence of teamwork throughout time, with specific emphasis on how attentively the business and healthcare fields have incorporated teamwork into their professional landscapes. These practices offer a powerful model for team development within Matrimonial Practice.

Teamwork is inherent to human nature. Throughout history, humans have self-selected into organized working groups. Ancient societies distinguished between hunters and gatherers, builders and teachers, and healers and storytellers. Historians and anthropologists have long studied the nature of the cooperative groupings used by members of the Paleolithic era to meet primal human needs, noting the existence of collective and strategic hunting endeavors, collaborative family caregiving and protection roles, joint invention and shared use of tools, and communal decision-making within ancient tribes.⁹ However, the distinct working groups were often compartmentalized. Ten hunters would hunt, ten gatherers would gather, and then they would bring their loot to their villages for evaluation and distribution. This framework allowed for big picture collaboration between larger working groups, but nuclear collaboration was discouraged.¹⁰

For centuries, compartmentalized teamwork reigned supreme. Civilized society bought into the age-old notion that experts working in a vacuum would be most efficient and productive. Hunters and gatherers turned into assembly line workers, relegated to sifting through the same slab of steel on a daily basis and bonding over their singular skill.¹¹ The qualitative benefits of expert collaboration through interdisciplinary teamwork were generally overlooked.

Even during the 20th Century, individual inventors often received sole credit for new innovations, despite the fact that multiple inventors had actually collaborated on inventions such

⁷ BINDER, BERGMAN, PRICE & TREMBLEY, *LAWYERS AS COUNSELORS* (2004).

⁸ Forrest S. Mosten & Lara Traum, *The Family Lawyer's Role in Preventive Legal and Conflict Wellness*, 55 FAM. COURT REV. 26 (2017).

⁹ W. PENN HANDWERKER, *OUR STORY: HOW CULTURES SHAPED PEOPLE TO GET THINGS DONE* (2016); NEIL KAGAN, *NATIONAL GEOGRAPHIC: CONCISE HISTORY OF THE WORLD* (2013); Donald J. Bodwell, *A Historical Perspective of High Performing Teams*, HIGH PERF. TEAMS (2006), http://www.highperformanceteams.org/hpt_history.htm. For an example of a modern collaborative practice group, see Laura Banks et al (Cypress Collaborative Practice Group, Washington), *Hunter-Gatherer Collaborative Practice*, 49 FAM. CT. REV 249 (2011).

¹⁰ See HANDWERKER *supra* note 9; KAGAN, *supra* note 9; Bodwell, *supra* note 9.

¹¹ See *Ford's Assembly Line Turns 100: How It Changes Manufacturing and Society*, N.Y. DAILY NEWS (Oct. 7, 2013), <http://www.nydailynews.com/autos/ford-assembly-line-turns-100-changed-society-article-1.1478331>

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as the cotton gin, the telegraph, the telephone, and the light bulb.¹² While teamwork was always an integral aspect of innovation and creative problem solving, it wasn't until the second half of the 20th Century that social scientists began to truly acknowledge, examine, evaluate, and categorize the types of teams that exist in our society. These evaluations have informed a more nuanced understanding of how teams function most effectively, and can inform future teambuilding in matrimonial practice.

Today, consumer expectations have started to shift. Consumers have begun to seek and expect the convenience of one-stop shopping, where all experts are available at a single location and can offer the benefit of their unique insight during a single interdisciplinary meeting or encounter. With time, this shift is likely to overtake the age-old model of compartmentalizing expertise.

A. General Types of Teams

It is important to develop a preliminary understanding of different categorizations of teams in order to be able to analyze team efficiency, train team members appropriately, and structure teams in a fashion that best matches the needs of a given profession.

i. Independent Teams versus Interdependent Teams

In independent teams, individual members can be left to their own devices. At the conclusion of independent teamwork, individual results are gathered together to inform and create a collective team conclusion.¹³ Independent teams are commonly seen in individual sports and science research labs, where individual gymnasts compete as part of a national effort or where individual researchers present their work at joint symposia. In these settings, the work process is individual, while the results are a boon to a collective group.

In contrast, within the context of an interdependent team, each and every team member can participate.¹⁴ Interdependent teams most commonly appear in the realm of team sports or military action, where a sole pitcher cannot play an entire game of baseball without her teammates or a sole lieutenant cannot execute an entire defensive strategy without his troops. Professional teams, such as those in the medical and legal worlds, have characterized themselves as necessarily independent.

¹² See Derek Thompson, *Forget Edison: This Is How History's Greatest Inventions Really Happened*. ATLANTIC (Jun. 15, 2012), <https://www.theatlantic.com/business/archive/2012/06/forget-edison-this-is-how-historys-greatest-inventions-really-happened/258525/>

¹³ See generally, Claus W. Langfred, *Autonomy and Performance in Teams: The Multilevel Moderating Effect of Task Interdependence*, 31 J. OF MANAGEMENT 513 (2005); Susan G. Coehn & Diane E. Bailey, *What Makes Teams Work: Group Effectiveness Research From the Shop Floor to the Executive Suite*, 23 J. OF MANAGEMENT 239 (1997); Charles J. Palus, *A Declaration of Interdependence*, HARV. BUS. REV. (Jun. 3, 2010), <https://hbr.org/2010/06/a-declaration-of-interdependen.html>.

¹⁴ See Langfred, *supra* note 13; Cohen & Bailey, *supra* note 13; Palus, *supra* note 13.

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However, recent studies suggest that a generally interdependent approach might prove to be more fruitful.

ii. Multidisciplinary Teams vs. Interdisciplinary Teams

Exhibiting the characteristics of independent teamwork, members of multidisciplinary teams focus on their individual expertise to resolve issues and report back to a group of individuals with differing expertise. In the medical field, such teams might involve different medical professionals who individually treat specific conditions, but share charts in order to provide comprehensive treatment to a single patient.

In an interdisciplinary team, role distribution is more fluid.¹⁵ Tasks can be shared or reassigned, with no member being consistently tasked with one aspect of what needs to get done. Where individuals with varied expertise become members of an interdisciplinary team, they may be the sole providers of their expert knowledge. While they cannot delegate that knowledge to other members, these experts still work on the tasks at hand collectively. They do not work separately and report back to teammates but, instead, brainstorm collectively and share their thoughts and opinions in a group setting.

iii. Executive Teams, Project Teams, and Work Teams

Executive teams strategize and manage a series of long-term teamwork ideas, often creating multiyear plans and delegating action items to other individuals, while project teams gather for a finite amount of time to work on a single matter.

Work teams¹⁶ take orders from executive teams. These actors may also become members of a project team, functioning as the individuals who are actually tasked with executing the action items at hand.

It may be useful to consider how these types are combined and blended to create teams throughout other professional fields before we apply them to matrimonial practice.

B. Professional Teams

Teamwork is at the forefront of discussions in the business, medical, and mental healthcare fields. Each of these different industries offers its own approach to defining the nature of teamwork and offering structural guidance as to how such teams should be built and managed. Notably, the absence of refined approaches to teamwork in legal practice continues to affect the legal industry

¹⁵ See Langfred, *supra* note 13; Cohen & Bailey, *supra* note 13; Palus, *supra* note 13.

¹⁶ See Langfred, *supra* note 13; Cohen & Bailey, *supra* note 13; Palus, *supra* note 13. As noted by Nancy Retsinas during a review of this Article, readers may wish to consider three work teams in particular: 1) those with members exhibiting varying degrees of control depending on the team's structure and values; 2) those where professionals and clients work towards unified goals together in pursuit of out-of-court, non-coerced settlement; and 3) those work teams that form within the context of a case, such as attorney-client teams, professional-to-professional teams, interspousal teams, et al.

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in negative ways. A brief overview of strategies and styles in different professions can offer invaluable insight as to what works, what does not work, and how these different professional models can help inform conversations surrounding interdisciplinary teams in matrimonial practice.

i. Business Teams

The formal utilization of teamwork in the business world began in the 20th Century and evolved into an entire discipline of its own, where professionals and academics continuously study and expand upon the art of business team construction. While business team models change and evolve, some team characteristics remain consistent. In a business context, team members are usually required to be interdependent, share authority and responsibilities, be accountable for collective performance, and work towards common goals.¹⁷ The psychological and structural impacts of clearly communicated rules and protocols, lean structuring, emotional support, and competitive buy-in are all integral to the success of business ventures and deal-making.¹⁸

One overarching premise of contemporary business team structuring is the idea that lean staffing promotes maximum efficiency. Leanly staffed projects bypass the inconvenience of middle management and ensure maximized contribution by each team member.¹⁹ The team relies on intelligent delegation, equal contribution, and minimal hierarchy. Team members often share nearly equal voices. Accordingly, for the leanly staffed team to function successfully, the group invests appropriate time and energy into ensuring that each member is fully apprised of the team's goals and objectives, aware of his or her role in effectuating these objectives, and committed to the project. As such a result, each member understands that his or her work is integral to the success of the project.

a. Types of Business Teams

In the business world, strategists and organizational psychologists evaluate the needs of the business, as well as the assets and skills of the business's various employees, and establish different types of teams that can help the business function and grow.²⁰ These different team "types" can be separated into a few categories, including Functional Teams, Cross-Functional Teams, Leadership Teams, Self-Directed Teams, Virtual Teams, Quality Circles, and Task Forces.²¹

¹⁷ *Team*, Business Dictionary, (last visited Aug. 17, 2017), <http://www.businessdictionary.com/definition/team.html>.

¹⁸ See Shlomo Wiesen, *Make the Dream Work: 5 Reasons Why Teamwork is Crucial to Workplace Success*, BUSINESS.COM (Feb. 22, 2017), <https://www.business.com/articles/5-reasons-why-teamwork-is-crucial-to-workplace-success/>; Luis E. Romero, *What Everyone Should Know About Teamwork*, FORBES (Jan. 20, 2016), <https://www.forbes.com/sites/luisromero/2016/01/20/what-everyone-should-know-about-teamwork/#138f2c5f3631>

¹⁹ See Wiesen, *supra* note 18; Romero, *supra* note 18.

²⁰ See Beth Miller, *7 Team Types That Make Business Possible*, BUSINESS 2 COMMUNITY (May 17, 2012), <http://www.business2community.com/strategy/7-team-types-that-make-business-possible-0177106#rrugfSH124KYOL0u.97>; Stephen J. Skripak, *Teamwork in Business*, PAMPLIN COLLEGE OF BUSINESS AND VIRGINIA TECH LIBRARIES (2016); SWIFT, *PRINCIPLES OF TOTAL QUALITY* (2004).

²¹ See Miller, *supra* note 20; Skripak, *supra* note 20; SWIFT *supra* note 20.

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Functional Teams serve as the traditional cornerstone of the business world as they come together within specific company departments.²² These teams perform designated roles within a company, and generally do not interact with other teams. They often have a hierarchical structure, have regular meetings, and perform their singular role, such as marketing or data analysis, in a compartmentalized fashion.

Cross Functional Teams take advantage of the expertise of different employees by cutting across a company's functional areas, pulling together team members from a wide range of departments.²³ These teams are often deemed the most creative, as they pull together different perspectives, without hierarchical distinction, when incubating ideas and developing products. Familiar Cross Functional Teams include teams like Nike and Motorola, which harness the perspectives of internal and external marketing professionals, finance professionals, designers, research experts, engineers, athletes, and beyond in order to produce world-class products with mass appeal. This approach to team creation emphasizes the Japanese theory of Kaizen,²⁴ which focuses on the importance of continual improvement, by involving all members of a company in strategy building and execution. According to the Kaizen theory, cross-functional involvement eliminates waste and holistically improves the functioning of the entire company.²⁵ Cross functional teams rely on this premise, and many companies have started to prioritize this model.²⁶

Leadership Teams are typically quasi cross-functional groups which consist of individuals who run their own functional teams.²⁷ These leaders, often all from different departments, gather together to debrief about the work of their respective functional teams, align goals and visions with other department leaders, and ensure that there is consistent communication between company departments.

Self-Directed Teams are teams that have no hierarchy. In such teams, each member is a self-starter.²⁸ These teams empower each employee to commit to an assigned or collectively determined goal and remain solely accountable for his or her contribution to the team in furtherance of that goal.

Virtual Teams further eliminate boundaries by rendering concrete workplace constriction obsolete. With technology such as videoconferencing and instantaneous data sharing, team members can share ideas and strategies from around the globe.²⁹ Virtual meetings can take place more frequently than those that need to take place in person. Team groups can be large. While certain benefits of direct interpersonal interactions and camaraderie can be lost, these losses are becoming less and less relevant as the millennial generation enters the workforce, and the logistical

²² See Miller, *supra* note 20; Skripak, *supra* note 20; SWIFT *supra* note 20.

²³ See Miller, *supra* note 20; Skripak, *supra* note 20; SWIFT, *supra* note 20.

²⁴ See Flora Baxter, *Kaizen: A Japanese Philosophy Could Change Your Team Structure for the Good*, TEAMBONDING (Oct. 8, 2014), <https://www.teambonding.com/kaizen-for-team-building/>.

²⁵ See Baxter, *supra* note 21.

²⁶ See Forrest S. Mosten, *Collaborative Divorce Handbook* (2009) 171

²⁷ See Miller, *supra* note 20; Skripak, *supra* note 20; SWIFT, *supra* note 20.

²⁸ See Miller, *supra* note 20; Skripak, *supra* note 20; SWIFT, *supra* note 20.

²⁹ See Miller, *supra* note 20; Skripak, *supra* note 20; SWIFT, *supra* note 20.

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benefits of virtual teamwork have converted many into believers due to the sheer convenience of online mechanisms.

Quality Circles are comprised of individuals who are specifically tasked with evaluating company workflow.³⁰ Incorporating ideas of Kaizen and focusing on an evaluation of the company as a whole, these teams are dedicated to ensuring that teams within large environments perform efficiently and that quality does not suffer as a result of size.³¹

Lastly, Task Forces pull together expert individuals who evaluate niche topics or issues in a cross-functional manner.³² These teams are often temporarily assembled to vet an idea or resolve a pressing concern.

Regardless of the team “type”, most teams consist of members with unique but complementary skills. These skills are evaluated on the basis of substantive talents, approaches to group strategy and dynamic building, and interpersonal abilities. Every team member needs to agree on common strategies, even if the approach to effectuating those strategies differs. And while these teams certainly understand the importance of shared long-term goals, teams additionally focus on the importance of establishing ways to measure short-term team progress.

b. Business Team Recognition and Success

Many business teams have gained renown in popular media. These teams all have unique guiding principles that inform their innovative success. The Java Development Team succeeded when management geographically isolated an innovative team from its parent company in order to foster the team’s development of an independent language that would interact with the internet.³³ The Ford Motor Company piloted a new approach to team efficiency when it developed assembly lines that streamlined the reliable output of automobiles.³⁴ The Google Team managed to create a powerful search engine by streamlining and minimizing the number of involved team members and focusing on a small cohort of innovators who worked out of a single dorm room or garage.³⁵ Walt Disney’s famous Team of Nine relied on the motivation of unified visionaries to create Mickey Mouse, Snow White and Cinderella.³⁶

Members of these, and other, successful business teams find that their team dynamics foster creativity, function more productively, build trust between members, encourage individual buy-in into the success of the collective group, and create a format for resolving conflict in an efficient and productive manner. Team members have an opportunity to benefit from the different experiences and perspectives of their teammates. They have formal meetings and devote time and space to creative brainstorming, generating more concepts to populate the landscape of ideas. They learn to trust and rely on one another’s assets, harnessing each member’s unique strengths and

³⁰ See Miller, *supra* note 20; Skripak, *supra* note 20; SWIFT, *supra* note 20.

³¹ See Baxter, *supra* note 24.

³² See Miller, *supra* note 20; Skripak, *supra* note 20; SWIFT, *supra* note 20.

³³ See Jeff Palfini, *Four Great Teams in Business History*, CBS NEWS (Jan. 25, 2008), <https://www.cbsnews.com/news/four-great-teams-in-business-history>.

³⁴ See Palfini, *supra* note 33.

³⁵ See Palfini, *supra* note 33.

³⁶ See Palfini, *supra* note 33.

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using them to uplift the entire team. The result is, most often, a higher quality, and more efficiently produced, work product.

c. Conditions Enabling Business Team Success

In the business world, while there are many different types of teams, approaches to team building and maintenance are often similar. In most instances, individuals who have taken business courses in college or committed to MBA programs received a substantial amount of teamwork-oriented training. Companies also invest in team building retreats and professional development trainings that focus on effective team strategy development and enhanced communication skills.

According to Forbes magazine, there are six keys to how effective teams are built.³⁷ The first two involve self-awareness and mutual trust. Many businesses devote substantial time to having employees study their own work styles and personality types through exercises and tests, such as the Myer Briggs test. Once employees develop self-awareness of their own work styles, they are able to develop a respect for the work styles of others, realizing that differences in opinion may be an asset. Through trust-building exercises and this developed respect, team members are able to open themselves up to the ideas of others and function in a more collaborative fashion. The third and fourth aspects of successful team building include clearly defining roles and responsibilities, and providing consistent constructive feedback. These two factors help structure the functionality of a team, creating a well-oiled machine where everyone has individual responsibilities and receives input regarding their work product and efficiency, all while understanding the importance of their unique contributions to the bigger goal. Two important components of successful teambuilding involve assuring that there is a clear rewards structure and that successes are celebrated.

Openly acknowledging the work of others through appreciation, respect, and celebration validates team members and reminds them that their contributions are integral to the success of any given project. These forms of structuring and positive validation are the “enabling conditions”³⁸ that help teams thrive in the business world.

ii. Medical Teams

In the healthcare field, teamwork is a recent and invaluable development. For centuries, residents of entire towns were often cared for by a single, omnipotent doctor, assisted by well-

³⁷ See Glenn Llops, *6 Ways Successful Teams are Built to Last*, FORBES (Oct 1, 2012), <https://www.forbes.com/sites/glennllops/2012/10/01/6-ways-successful-teams-are-built-to-last/#68e6c8032b55>; Theodore Henderson, *Leadership and Teamwork: The Secret Sauce to Business Success*, FORBES (Feb.8, 2017), <https://www.forbes.com/sites/forbescoachescouncil/2017/02/08/leadership-and-teamwork-the-secret-sauce-to-business-success/#7355a93736f1>.

³⁸ See *infra* Section C.

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intentioned family members following his strict orders.³⁹ Over the past few decades, however, approaches to medicine have changed.

a. An Overview of Medical Teams

With the rapid advancement of modern medicine and medical research, new information regarding anatomical complexities and ailments is continually surfacing. As a result of scientific discovery and innovation, the healthcare industry has entered into the age of specialists. Individual doctors have become unable to meet the needs of the modern patient – a person is frequently diagnosed with a slew of specific ailments that require cutting-edge expertise and expensive treatment technology. The “town doctor” can no longer address the intricacies of complex cardiology, gastroenterology, or endocrinology alone. Her toolkit does not contain laboratories and cannot perform EKGs. Instead, the town doctor has become a general diagnostician and source for referrals, a gateway liaison to specialists’ waiting rooms.⁴⁰

While the age of specialists temporarily improved caretaking options for complex conditions, the referral-based approach proved to be far from perfect when too compartmentalized.⁴¹ Patients often presented with conditions that did not comport with any single specialty. Patients with gastrointestinal problems came into their internists’ offices, struggling with arthritis pain. Patients with cardiovascular problems called their primary physicians, complaining about their vision. Suddenly, in the 21st Century, patients began to reminisce about the “town doctor” and his regard for the “whole patient” with nostalgic affection. After all, the “town doctor” always had something for your ear as well as your foot, and she once cured your mother and your grandmother of the same mysterious ailments before you.

Not only did the age of specialists become an age of inconvenience, but clinicians’ compartmentalized approaches, akin to the traditional legal division between litigation and settlement specialists, also started to cause harm. With specialists working in isolation from one another, patients were forced to become their own advocates, educating themselves to the best of their unprofessional abilities in order to inform each specialist of any other specialist’s existence, diagnoses, ongoing testing regimen, and proposed treatment plans. Patients who found themselves unable to manage this information themselves became vulnerable to misdiagnoses, receipt of contraindicated medication, and overall improper treatment of their holistic set of conditions.

Acknowledging the setbacks posed by the age of specialists, the healthcare system has started to evolve. Healthcare professionals have developed approaches to teamwork that mitigate service complexities surrounding clinical care. They have learned to accommodate the needs of patients that require interdisciplinary medical team management to address multiple simultaneous health

³⁹ See generally, T.M. Brown. *An historical view of health care teams*. 12 RESP. IN HEALTH CARE 3 (1982); Pamela Mitchell, et al. *Core Principles & Values of Effective Team-Based Health Care*, INST. OF MED. OF THE NAT. ACAD. (2012). ML Barnett et al. *Physicians patient-sharing networks and the cost and intensity of care in US hospitals*. MEDCARE 152 (2012).

⁴⁰ See Brown, *supra* note 37; Mitchell, *supra* note 37; Barnett, *supra* note 37.

⁴¹ Mitchell, *supra* note 37; Barnett, *supra* note 37.

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problems.⁴² Upon evaluating patient needs with specialists' skills, team-based healthcare was born.

Due to specialization, few doctors today diagnose, as internists or oncologists do, and also practice surgery. Diagnostic medicine and surgery have virtually turned into separate professions. Surgeons perform their assigned functions and then return a patient to an oncologist and then, eventually, to an internist. As these separate professions are recalibrated into team roles, the benefits are magnificent. Where a surgeon and oncologist function as a team, diagnostic evaluation can lead to less surgery and patient choice, via informed consent, takes center stage.

Furthermore, healthcare teams also offer an opportunity for members of entire families to be treated by multiple clinicians who interact directly with one another, sharing information and relying on one another's informed treatment protocols. According to Naylor, team-based healthcare is defined as "the provision of health services to individuals, families, and/or their communities by at least two health providers who work collaboratively with patients and their caregivers – to the extent preferred by each patient – to accomplish shared goals within and across settings to achieve coordinated high-quality care."⁴³ Some examples of these healthcare teams include:

1. The Department of Veterans Affairs Patient-Aligned Care Teams (PACT), comprised of a veteran, a registered nurse, a physician, a licensed practical nurse, and a clerical assistant, aims to provide inter-professional care coordination for veterans as a component of a patient-centered medical home and there are over 7,000 such teams throughout the United States.⁴⁴
2. The University of Pennsylvania Transitional Care Model, comprised of hospital, primary care, home health, hospice, transitional nursing and other healthcare staff, aims to provide at-risk chronically ill older adults and their families with transitional care services in a variety of care settings.⁴⁵
3. The Hospice of the Bluegrass Team in Kentucky, comprised of a hospice physician, on-call nurse, nursing assistants, chaplains, bereavement counselors, social workers, and volunteers, aims to manage terminal illnesses for patients in a holistic fashion.⁴⁶
4. The MD Anderson Cancer Center in Houston, Texas utilizes multidisciplinary teams, comprised of medical oncologists, surgical oncologists, radiation oncologists, radiologists, pathologists, pharmacists, research and clinical nurses, and genetic counselors to coordinate specialties and develop a comprehensive cancer care plan.⁴⁷

Interdisciplinary teamwork is now at the cornerstone of the healthcare industry. While they target different audiences and conditions, each of the healthcare teams discussed above utilizes interdisciplinary strategies to create a patient-centric system. Each team member learns about each

⁴² See generally, *Why Is Teamwork in Healthcare Important*, HRH GLOB. RES. CTR. http://www.hrresourcecenter.org/HRH_Info_Teamwork (last visited Aug. 17, 2017);

⁴³ Naylor, et al. *Inter-professional team-based primary care for chronically ill adults: state of the science*. ABIM Foundation Meeting Paper (2010).

⁴⁴ Mitchell, *supra* note 37.

⁴⁵ Mitchell, *supra* note 37.

⁴⁶ Mitchell, *supra* note 37.

⁴⁷ Mitchell, *supra* note 37.

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patient's needs as a unique individual. Patients are no longer a "standard appendicitis case" or a "standard sepsis case". Instead, each patient is evaluated holistically, as an individual. This approach improves diagnostic efficiency, and revitalizes patient trust.⁴⁸ Many more lives are saved and improved.⁴⁹ The patient is no longer relegated to trial and error by a single attending doctor. Instead, multiple clinicians evaluate the patient together, inform the patient of treatment options, and create a tailor-made treatment plan based on the patient's informed consent.⁵⁰

The interdisciplinary healthcare team is not unlike the teams that appear in matrimonial practice, such as co-mediation teams and collaborative practitioner teams. In medicine and matrimonial practice alike, professionals gather together around the needs of a single patient, or couple, to co-diagnose, co-facilitate, and co-initiate solutions to challenging problems. As discussed below, the healthcare team serves as a useful model for building and improving the functionality of matrimonial interdisciplinary care.

b. Conditions Enabling Medical Team Success

In the medical field, teams are composed of professionals and staff members with different skills and expertise. In order to build an effective team, team members receive training and feedback regarding their individual and collective contributions, shared goals, mutual support, and communication skills.⁵¹ In a study regarding teamwork skills and required behaviors among healthcare professionals working as members of a team, scholars concluded that leaders needed to be able to communicate awareness and understanding of desired outcomes, purposes, team roles, task requirements, and plans.⁵² Team members needed to be able to provide and receive feedback, provide and request assistance, trust their teammates, adapt or reallocate tasks as needed, and share information clearly, using objective language and correct terminology.

The medical community has committed to building and improving the functionality of these teams through education and training programs both during medical school and throughout

⁴⁸ See Anna T. Mayo, et al., *Teamwork in Health Care: Maximizing Collective Intelligence via Inclusive Collaboration and Open Communication*, 18 AMA J. OF ETHICS 933 (2016).

⁴⁹ See Jemima Frimpong, et al. *When Health Care Providers Look At Problems From Multiples Perspectives Patients Benefit*, HARV. BUS. REV. (Jun. 23, 2017), <https://hbr.org/2017/06/when-health-care-providers-look-at-problems-from-multiple-perspectives-patients-benefit> (stating that "When healthcare providers look at problems from multiple perspectives, patients benefit").

⁵⁰ See Amitha Kalaichandran, *Design Thinking For Doctors and Nurses*, NY TIMES (Aug. 3, 2017), <https://www.nytimes.com/2017/08/03/well/live/design-thinking-for-doctors-and-nurses.html>, stating "A 2016 report that looked at ways in which a health system can implement design thinking identified three principles behind the approach: empathy for the user, in this case a patient, doctor or other health care provider; the involvement of an interdisciplinary team; and rapid prototyping of the idea. To develop a truly useful product, a comprehensive understanding of the problem the innovation aims to solve is paramount."

⁵¹ See Heather Gulyas, *Effective Communication and Teamwork Promotes Patient Safety*, NURSING STANDARD 29 (2015), <http://journals.rcni.com/doi/abs/10.7748/ns.29.49.50.e10042>. See also Neil W. Hamilton, *Professional-Identity/Professional-Formation/Professionalism Learning Outcomes: What Can We Learn About Assessment from Medical Education?*, 13 UNIV. ST. THOMAS L.J. (2017 forthcoming); Sandra G. Leggat, *Effective Healthcare Teams Require Effective Team Members: Defining Teamwork Competencies*, 7 BMC HEALTH SERV. 17 (2007).

⁵² See Gulyas, *supra* note 51; Hamilton, *supra* note 51; Leggat, *supra* note 51.

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professional practice. As a result of these trainings, healthcare professionals have created practical approaches to ensuring consistent communication and goal-sharing.⁵³ Best practices focus on the importance checklists and read-back protocols, technological communication tools, and debriefing procedures. The implementation of these practical procedures provides the necessary “enabling conditions” of strong structure and support that make teamwork feasible and productive in the healthcare setting.

iii. Mental Healthcare Teams

Most contemporary mental health care protocols involve direct or indirect collaboration between mental healthcare providers. These providers, including psychologists, social workers, psychiatrists, marriage and family therapists and counselors, and community leaders such as members of the clergy, work together to create unified goals and approaches in an effort to provide a consistent environment for those with psychological and emotional vulnerabilities.

a. An Overview of Mental Healthcare Teams

Members of the mental health professional community codified a formal approach to professional teamwork in the 1970s, when large numbers of patients lost their access to care due to the abolition of many state-operated psychiatric hospitals and general deinstitutionalization of mental healthcare.⁵⁴ In response to this social service crisis, the Program of Assertive Community Treatment was born.⁵⁵

The Program of Assertive Community Treatment, which later evolved into the modern day ACT program, offered an integrated approach to community mental health service delivery to outpatients with functioning difficulties.⁵⁶ This program provides a patient-centric approach to mental healthcare that promotes the participants’ individuality and independence by emphasizing home visits and assessments by a “core services team” comprised of a psychiatrist, case managers, social workers, nurses, substance use specialists, vocational rehabilitation specialists, and peer support specialists.⁵⁷ With the leadership and supervision of a designated mental health professional, all involved team members work together with the program participants and are held individually accountable for their respective impact on the patient. The success of this team-based approach to delivering mental healthcare services has been recognized by the United States Federal Government’s Substance Abuse and Mental Health Services Administration, the National Alliance of Mental illness, and the Commission on Accreditation of Rehabilitation Facilities.⁵⁸

⁵³ See Gulyas, *supra* note 51, Hamilton, *supra* note 51; Leggat, *supra* note 51.

⁵⁴ See Gary Direnfeld et al., *Collaborative Services and the Integration of Preschoolers with Special Needs*, Unpublished Manuscript (1993); See also STEIN & TEST, ALTERNATIVES TO MENTAL HOSPITAL TREATMENT (1980).

⁵⁵ See Helen Killaspy, *Assertive Community Treatment in Psychiatry*, 2007 BMJ 335 (2007); Lara Carson Weinstein et al, *Transforming Assertive Community Treatment Into an Integrated Care System: The Role of Nursing and Primary Care Partnerships*, 17 J. AM. PSYCH. NURSES ASSOC. 64 (2011); Direnfeld, *supra* note 48.

⁵⁶ See Killaspy, *supra* note 55; Weinstein, *supra* note 55; Direnfeld, *supra* note 54.

⁵⁷ See Killaspy, *supra* note 55; Weinstein, *supra* note 55; Direnfeld, *supra* note 54.

⁵⁸ See Killaspy, *supra* note 55; Weinstein, *supra* note 55; Direnfeld, *supra* note 54.

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Today, the ACT model informs and inspires approaches to mental health service delivery across the country. For example, the BRIGHTEN Team in Chicago, comprised of a patient, psychologist, social worker, chaplain, psychiatrist, physical and occupational therapist, pharmacist, dietician, and primary care provider, aims to support and treat older adults with depression and anxiety.⁵⁹

Most notably, this team-based approach straddles multiple healthcare categories, particularly in the setting where patients suffer from conditions such as dementia and Alzheimer disease.⁶⁰ In most cases, patients suffering from dementia experience physical disability as well as behavioral problems that impact their ability to care for themselves and function in society. Professional teams that can collaboratively manage the behavioral and physical complications are invaluable. Studies have shown that patients benefiting from such professional team intervention demonstrated significant improvement of their physical, behavioral and psychological symptoms alike.⁶¹

b. Conditions Enabling Mental Healthcare Team Success

In the mental health field, the team approach often requires a more traditional approach, involving leadership by psychiatrists and psychologists and collective execution by all other members of the team.⁶² These teams require substantial technological assistance. Computer reminders, electronic records, and performance feedback practices help the rotating cast of characters, from psychiatrists to psychologists to communal caregivers, maintain consistent protocols.⁶³

Members of mental health caregiving teams often receive joint training in order to ensure that they adhere to standardized procedures so that patient needs are met with consistency and comprehensive knowledge.⁶⁴ Teams hold integrated meetings in order to maintain a comprehensive understanding of the patient's progress and ensure that sensitive approaches are informed by the same factors. While psychiatrists are often the leaders because they are able to diagnose conditions, as well as coordinate prescriptive protocols, these leaders rely on all team members for consistent protocol application. Team members must develop respect for the psychiatrist's instructions, and the psychiatrists, in turn, must acknowledge their reliance on the labor of the non-psychiatric team members. Mutual respect, comradery, and effective communication provide the "enabling conditions" necessary for mental health teams to function smoothly.

iv. Legal Teams

⁵⁹ Mitchell, *supra* note 37; Gary Drenfeld, *supra* note 54.

⁶⁰ Amita Patel & Mark Shideler, *Time for Teamwork*, PSYCHIATRIC TIMES (Dec. 15, 2010), <http://www.psychiatristimes.com/geriatric-psychiatry/time-teamwork>

⁶¹ See Callahan, et al. *Effectiveness of collaborative care for older adults with Alzheimer disease in primary care: a randomized controlled trial*, 2006 JAMA 2148 (2006) (discussing improvement in symptoms such as agitation and aggression).

⁶² See Josie Jenkinson, et al., *Teamwork: the art of being a leader and a team player*, 19 ADVANCES IN PSYCH. TREATMENT 221 (2013), <http://apt.rcpsych.org/content/aptrpsych/19/3/221.full.pdf>

⁶³ See Jenkinson, *supra* note 62.

⁶⁴ See Jenkinson, *supra* note 62.

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While business, healthcare, and mental health professionals are trained to become members of interdisciplinary teams within their companies and clinics alike, lawyers in the United States usually work alone, much like the traditional town physician. This individualistic approach to legal practice does not reflect the origins of our system's legal practices. Historically, a lawyer's role was bifurcated between solicitor and barrister.⁶⁵ As such, solicitors often work as generalists who provide legal advice and support to clients, while barristers provide specialized advice and represent clients in court through oral arguments and litigation. This division of labor and, in turn, reliance on teamwork, continues to be the prevailing model of legal practice in England⁶⁶.

In contrast, lawyers in the US have an integrated role. They counsel and advise their clients, and handle their clients' negotiations and court actions as well. While it may seem efficient to combine these professional characteristics and have one professional offer all aspects of legal service, expertise and team creativity may be compromised.

Today, many law firms and legal practitioners acknowledge that the absence of teamwork is a disadvantage to legal practice. Even in the British model, the solicitor-barrister "team" may be collaborative, but it is far from interdisciplinary.

When attorneys work in teams, they are expected to demonstrate "collaborative qualities" without true systemic creation of solid team-based practice models. Except for clinical experience and law school competitions,⁶⁷ law students generally are not trained to work together as teammates. Lawyers rarely practice their craft in a team-oriented fashion. From the very first day of law school, legal educators focus on educating the individual lawyer rather than a team member.⁶⁸ Within their private practices, distrustful attorneys protect their client contact lists and restrict their colleague's access to client databases. In business law, general counsel are generally in charge, directing lawyers both internally and externally. In law firms, while cases may be staffed with a team of partners, associates, paralegals and support staff, associates are hierarchically kept in line while partners make decisions.

References to legal "teams" typically refer to compartmentalized, specialized working groups within a given department. Attorneys might be members of a litigation team, a trial team, a settlement team, a transactional team, or a negotiation team. These functional teams, in addition to being departmental and not multidisciplinary, generally do not receive team training or guidance. Professional development departments at law firms generally do not devote energy and resources to collaborative skills trainings or collective goal building exercises. Instead, in these

⁶⁵ See Marilyn J. Berger, *A Comparative Study of British Barristers and American Legal Practice and Education*, 5 NW. J. INT'L L. & BUS. 540 (1983-1984); Samantha Love, *Solicitor or Barrister? How to Choose the Legal Career That's Right for Your?*, OXFORD ROYAL ACAD. (Dec. 20, 2013), <https://www.oxford-royale.co.uk/articles/choosing-barrister-vs-solicitor-career-paths.html>

⁶⁶ While clients are typically unable to receive advice and proceed to trial without the involvement of both a solicitor and barrister, solicitors have been given authority to handle many family law actions in England today.

⁶⁷ See Larry Teply, *Law School Competitions* () and Louis Brown and Forrest S. Mosten *International Client Consultation Competition* www.brownmosten.com

⁶⁸ See generally Janet Weinsten et al., *Teaching Teamwork to Law Students*, 63 J. LEGAL EDUC. 36 (2013); *The Importance of Teamwork in the Modern Law Firm*, LEXICATA (Apr. 21, 2016), <https://blog.lexicata.com/importance-teamwork-modern-law-firm/>.

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legal “teams”, one person strategizes while others carry the water: draft motions, and a still others prepare arguments for hearings or trials. Members typically receive individualized assignments, and only report back to the team when their assembly-line tasks are completed. Unless a superior is concerned with spot-checking for quality control or seeks to provide associates with new instructions, team meetings are rarely held and cross-hierarchical brainstorming is not encouraged.

The legal field has only recently started expressing an interest in learning more about the benefits of company teamwork. The recent shift towards addressing teamwork and teambuilding in the legal industry comes hand in hand with the modern trend towards viewing law firms as businesses with increased specialization.⁶⁹ Just as in the business world, interdepartmental idea-sharing and client-sharing can boost overall law firm revenue. And just as in the healthcare world, increased legal complexity and specialization has made it critical for law firms to market themselves as teams of interconnected, interdisciplinary specialists that can provide one-stop shopping for all of a client’s legal needs. However, law firms have yet to develop formal structures or training programs for these teams, and it will take many years to evaluate the extent to which legal teamwork models can revolutionize the industry.

The fact that teamwork in the legal field is decades behind the business and healthcare industries is not a matter of tradition alone. Attorneys and other legal professionals who are bound to a code of professional conduct encounter significant roadblocks when exploring the possibilities of interdisciplinary teamwork, due to the ethical parameters of the legal field. For example, professional responsibility laws across the United States prevent attorneys from forming interdisciplinary partnerships and sharing their profits with non-legal professionals.⁷⁰ These laws also dictate that referrals to external professionals must be non-exclusive, so a single attorney may not cross-refer and collaborate with merely one social worker or one accountant for the entirety of their legal career.⁷¹ Finally, strict confidentiality laws prevent attorneys from fully engaging in interdisciplinary teamwork with certain professionals, such as therapists, who may be mandated to break confidences just as attorneys are tasked with preserving them.⁷² The formation of an interdisciplinary team involving legal professionals might violate some of these parameters.

An emphasis on teamwork can revolutionize how legal professionals work and offer services from within their own firms and legal organizations. Interdisciplinary collaboration between attorneys, paralegals, marketing professionals, HR directors, financial professionals, and social workers within a given firm can improve the product that many law firms offer and increase client

⁶⁹ *The Importance of Teamwork in the Modern Law Firm*, *supra* note 68.

⁷⁰ ABA CODE OF PROFESSIONAL RESPONSIBILITY AND OPINIONS ON ETHICS, Rule 5.4; Christopher M. Fiarman, *Growing Pains: Changes in Collaborative Law and the Challenge of Legal Ethics*, 30 CAMPBELL L. REV. 237 (2008); John Lande, *Possibilities for Collaborative Law: Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering*, 64 OHIO ST. L.J. 1315, 1321 n.13 (2003).

⁷¹ ABA CODE OF PROFESSIONAL RESPONSIBILITY AND OPINIONS ON ETHICS, Rule 7.2; Fiarman, *supra* note 70; Lande, *supra* note 70.

⁷² Some attorneys try to bypass the tensions between mandatory reporting and confidentiality by making social workers secondary members of their team, in order to protect confidentiality and utilize the work product exception. Unfortunately, this non equality, which leaves lawyers in charge, vitiates against true teamwork. Attorneys may wish to look to surgeon-nurse relationships in medicine for teambuilding guidance under such circumstances.

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satisfaction exponentially. While limits to teamwork may exist, there is still room for collaborative growth within the legal industry.

C. How Interdisciplinary Legal Teams Can Be Built

In the seminal research conducted by J. Richard Hackman over the course of over 40 years, Hackman evaluated the character of team effectiveness.⁷³ This pioneering behaviorist uncovered that successful teams did not have to have singular characteristics. From a behavioral standpoint, team effectiveness was not informed by personalities and attitudes, but instead, by the existence of “enabling conditions”. While Hackman identified numerous such enabling conditions, recent scholars point to three most important ones – compelling direction, strong structure, and support.⁷⁴

i. Training Matrimonial Lawyers and Team Building

The matrimonial field can learn much from how business and healthcare teams have been built. From education to professional development, this section highlights some of the skills and approaches to teambuilding that have been effective in other fields.

In the legal field, teambuilding is still in its infancy. Some law schools, such as California Western School of Law, are starting to offer courses in teamwork.⁷⁵ However, such courses are still outliers in the legal education community. In most cases, law schools train students to focus on their education as individuals. Competitive grading systems pit students against one another and make them wary of viewing their classmates as teammates. This approach is vastly different from business school or medical residency education, where clinical work based on teams is primary. Even where law schools have started to integrate teamwork education, they rely on the teambuilding techniques and education provided by other industries, such as medicine and business.⁷⁶ The legal industry has the opportunity to develop its own approach to teaching law students how to harness the benefits of teamwork.

The matrimonial field can look to these models to consider its own “enabling conditions”. Perhaps a commitment to professional development and self-awareness assessments, as suggested by the business world, could enhance an attorney’s scope for empathy and respect for interdisciplinary needs. Perhaps the application of consistent protocols discussed by healthcare professionals could help members of matrimonial teams improve their modes of communication and debriefing procedures. As discussed below, many inter-professional relationships already exist within matrimonial practice. Lessons from the business and healthcare fields can help turn these relationships into effective teams, focused on service delivery and client satisfaction.

⁷³ Martine Haas & Mark Mortensen, *The Secrets of Great Teamwork*, HARV. BUS. REV. (2016), <https://hbr.org/2016/06/the-secrets-of-great-teamwork>.

⁷⁴ Haas & Mortensen, *supra* note 73. See also, Alex Pentland, *The Hard Science of Teamwork*, HARV. BUS. REV. (Mar. 20, 2012), https://hbr.org/2012/03/the-new-science-of-building-gr?referral=03759&cm_vc=rr_item_page.bottom

⁷⁵ See Weinsten, *supra* note 65.

⁷⁶ See Weinsten, *supra* note 65.

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ii. Integrating the Legal Client into the Team: Triage and Informed Consent

After a professional team has been built, questions arise surrounding client and patient integration. How does the client become part of the team? How can the team most effectively assist the patient? The medical team models previously discussed offer the most helpful examples of how well built teams can succeed under pressure and still ensure that a patient's wishes are consistently honored.

When a patient first passes through the doors of an emergency room, the patient encounters triage. Triage is a gateway to longer-term care, where a patient's complaints are first evaluated.⁷⁷ At this stage, the patient controls the story. The patient describes symptoms, explains experiences, and highlights problems.

However, while the patient tells her story, the patient does not typically receive options at this preliminary stage. Instead, the patient's complaints trigger an urgent call to mobilize the medical team. Once the team is in place and urgent matters are addressed, the patient receives information and resumes control.

Medical team mobilization in the emergency room setting is not unlike the sounding of an alarm at a fire station. Emergency room doctors quickly determine the issues at hand and make phone calls to appropriate professionals, such as anesthesiologists to set up regulated breathing or nurses to administer IVs. These simultaneous doctor and nurse assessments expedite waiting times and evaluative conclusions. The emergency room doctors also reach out to the patient's primary care doctor to ensure that they are aware of any preexisting conditions and receive any relevant charts. The phone tree triggers an instant response, and each medical team member comes sliding down the fire pole in a rush to help.⁷⁸

Once emergency mechanisms are in place and any critical needs are addressed, the team can pause, convene, debrief, diagnose, and discuss treatment options. It is at this stage that the client reenters the conversation and is presented with multidisciplinary diagnostic information in order to be able to make an informed decision regarding next steps. Clients can then meet and interview other potential medical team members, such as surgeons or nutritionists, and decide how they would like to proceed.

In other fields, team-oriented triage and the journey towards informed consent are remarkably similar. In matrimonial practice, when clients come into a law office with urgent needs, attorneys quickly evaluate the issues at hand and deal with any time sensitive concerns in an expedited fashion. Mostly functioning as both diagnosticians and surgeons (litigators), matrimonial lawyers discuss longer-term goals and strategy with the clients, informing them of their options and encouraging them to take charge over the substantive decision-making associated with their case.

⁷⁷ Ramesh Aacharya, Chris Gastmans, & Yvonne Denier, *Emergency Department Triage: An Ethical Analysis*, 11 MBC EMERG. MED 16 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3199257/>.

⁷⁸ F Subash, F Dunn, B McNicholl, & J Marlow, *Team Triage Improves Emergency Department Efficiency*, 21 EMERGENCY MED. J. 542 (2004).

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III. How Teamwork Can Be Part of Matrimonial Practice

While matrimonial lawyers are used to practicing alone, the nature of family conflict resolution often requires multi-party and multi-professional involvement. Examining existing approaches to collaboration in the realm of matrimonial practice, and further structuring matrimonial professionals into formal teams, is a natural next step towards perfecting the profession and ensuring that client needs are fully met. From standard litigation, where the use of experts and evaluators continues to involve multidisciplinary professionals in the dispute resolution process, to co-mediation and collaborative practice, where team-oriented parameters are already more established, matrimonial practice lands at the intersection of many professional disciplines. The next few sections offer a brief overview of some of the teams that currently exist within matrimonial practice, with a specific emphasis on the depth of team creativity that can become possible in the Collaborative Practice setting.

A. Use of Experts in Matrimonial Litigation

In traditional matrimonial litigation, matrimonial law attorneys are used to handling the entire matter themselves, relying on their expertise to make assessments and offer preliminary strategies. The decisions to utilize the court process are strategic and utilitarian. As a result, clients often find themselves party to temporary hearings or court actions very quickly, without much opportunity to explore other, less invasive, process options.

Even within the context of traditional litigation, attorneys are not the only individuals who influence the outcome of a case. Whether through court orders, mutual agreements between adversaries, or individual referrals, expert consultants and evaluators offer concrete information and assessments that can help a judge fulfill her role as a fact-finder. Whether these experts' diagnoses are admissible in court or confidential in nature, they can have a substantial impact.

During matrimonial disputes, the experts most commonly involved include psychologists who evaluate individual parties' mental health and their relationships with their children, psychiatrists who help determine whether parties are fit to parent given chemical imbalances or mental health conditions, social workers who guide parents attempting to rehabilitate themselves and avoid termination of their parental rights, medical experts such as pediatricians, and forensic accountants who help with asset valuation and characterization of joint and separate property.⁷⁹ While these experts rarely find themselves sitting around a table together, they form a professional network that helps propel and direct a particular family's future.

When appointed by the court, these experts may be tasked with evaluating the subject matter at issue and presenting their own conclusions in separate fashion to the judge. When retained by attorneys, these experts may help support narratives and arguments that the attorneys are preparing in an effort to advocate for their client. Sometimes, experts can also offer

⁷⁹ Steven Gomez, *Family Law Expert Witness and an Introduction to Family Law*, THE EXPERT INSTITUTE (Aug. 28, 2013), <https://www.theexpertinstitute.com/family-law-expert-witness-introduction-family-law/>

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confidential, preliminary opinions to clients regarding possible case outcomes which, in turn, can help the clients decide whether they should accept a settlement offer or proceed to trial.⁸⁰

i. Experts Who Join the Team: Triage, and Informed Consent

Experts involved with matrimonial litigation can improve their practices by learning from the healthcare team and triage models. When families first find themselves in court, there is often an “emergency room” feel to the environment. The stakes are high, and the issues are pressing. Is one parent going to be excluded from the marital residence? Is one parent going to be awarded temporary custody? Does one parent pose a danger to the child’s well being? Are assets being spent down at a rapid and destructive rate? Families in crisis who turn to the court system need judges to make quick decisions, often in a pendente lite format, and judges, in turn, need experts to help guide those decisions.⁸¹

Just as medical triage teams offer emergency responses and longer term feedback, a trail of experts helps guide families through various stages of a matrimonial dispute. For example, when judges are presented with allegations of child abuse and neglect or parental substance abuse, forensic psychologists and psychiatrists are often called to assess and intervene via court order. In addition to child protective services, doctors might be called to urgently evaluate injuries just as law enforcement officials may need to urgently address volatile or violent situations.

During this emergent, evaluative stage, clients are not yet taking charge over decision-making. In fact, they have little control over initial case outcomes and the contents of temporary court orders. At this stage, the experts are the ones running the show, in an effort to swiftly gather information and diagnose the issues as hand. These diagnoses might inform emergency measures, such as temporary removal of children from homes or temporary transfers of custody from one parent to another. However, the experts generally work alone and even compete with the opinions of others for judicial acceptance. Rarely, does a judge appoint an interdisciplinary team and charge its members to work together. Even more seldom are such teams formed by legal professionals outside of the court setting.

Once emergency protections are in place, clients can reclaim some ownership over their cases. Their lawyers might encourage them to meet with alternate forensic experts to debunk the initial conclusions. Accountants and financial planners might make personal suggestions regarding their financial realities in an effort to help them decide what to have their lawyers request in court. Still, even with the possibility of individualized expert consultation, parties to litigation do not fully dictate the eventual outcome of their case.

While clients might be able to discuss interests and strategy with their attorneys and make micro decisions based on the information that they receive from experts, their voices are too often limited.⁸² Attorneys speak on behalf of their clients while in the courtroom, and final orders are

⁸⁰ See Forrest S. Mosten, Confidential Mini-Child Custody Evaluations, *Family Law Quarterly*, (2011) 119

⁸¹ Some jurisdictions have legislation or court rules that either compel or suggest a team management approach. See the State of California’s Case Management Statement, CAL. RULES OF COURT, RULES 3.720-3.730, <http://www.courts.ca.gov/documents/cm110.pdf>

⁸² For a client-centered lawyer’s approach, see Binder et al, *supra* note 7.

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issued by fact-finding judges who evaluate the scenario as presented by attorneys and experts, and then apply the law to the facts as presented. Client consent to such judicial decisions is rarely considered by judges. The judge's decision is finite, unless an appeal is appropriate.

Since the courtroom does not allow for a great degree of party agency, client involvement throughout other stages of the litigation process is even more critical. If a client does not make informed decisions along the way, the results can be difficult to reverse. Expert collaboration throughout pre-trial practice offers clients the only chance that they will have to collect information and make time-sensitive, crucial decisions that may impact the outcome of their case.

ii. Training the Experts: Streamlining Goals When Experts Collide

While experts receive thorough training in their respective disciplines, they rarely devote time to exploring their role in a family's global view. As a result, expert evaluations and conclusions can have consequences that the experts themselves may have wanted to avoid. Additionally, courts find themselves spending a substantial amount of time engaging in battles of experts.⁸³ Expert training, focused on streamlining goals and objectives, would help the court system create an efficient team of professionals that do not need to crowd the dockets with discord.

In traditional litigation, experts tend to render their opinions in a compartmentalized fashion. They are retained for singular purposes, and do not interact with the rest of the problems. However, consulting experts can still be trained to consider the emotional and holistic needs of the parties at hand, learning that their opinions will impact a broader family picture. They can also receive specific training in empathic listening and team building.

When considering the structure of court-appointed expert teams, trainers can consider the different roles of the judge members and expert members of the team. Judges often become natural leaders of the expert team, but rarely receive leadership training regarding this particular team role. Upon receiving such training, judges can then better help teach the experts about what information is helpful when assisting the judge in the challenging work of fact finding, and what information is ancillary or even prejudicial. Expert members should, in turn, be trained as to the need for efficient reporting and the dangers of bias. Judges rely on expert opinions when making crucial decisions about child custody, or determining whether to characterize an individual's spending as marital waste. The tone with which an expert drafts a report, or testifies in court, should be as impartial and streamlined as possible, in order to play a supporting role to the judge and complementary role with other experts, rather than a leading role that improperly influences the outcome of a case.

A properly trained expert-attorney-judge team can enhance the efficiency of matrimonial litigation. Clients can receive helpful pre-trial assessments and evaluations. Judges can receive streamlined reports that focus on concrete data and information. Team trainings that focus on communication, neutrality, and family dynamic sensitivity can improve matrimonial practice within the context of traditional litigation.

⁸³ See the debate on attachment theory in this journal, 49 Family Court Review, 2011 and another debate on Legal and Psychological Management of Cases, 39 Family Court Review, 2005

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B. Co-Mediation

Mediation has become one of the mainstays in the field of family dispute resolution. Offering more client agency and informed decision-making options than litigation, mediation is lauded for its neutral and client-centered approach to settlement. Mediation can be voluntary and private, taking place outside of court. Sometimes, it can even be preventive in nature. However, some parties may still find themselves at a mediator's table pursuant to a court order.⁸⁴

In a standard mediation, a neutral mediator helps parties facilitate a direct negotiation regarding all aspects of their divorce matter, without involving attorneys or the court system. At the conclusion of a mediation session, parties often enter into a signed separation agreement that reflects the terms that they have discussed, and can be submitted as part of an uncontested divorce filing. This process allows families to take ownership over their divorce process, agree upon terms that are tailor-made for their particular family dynamic, and avoid the time and cost of going to court.

In Co-Mediation, parties benefit from the guidance of two mediators who offer a team-based approach to the facilitation process. Whether both mediators are attorneys or whether the team is more interdisciplinary, Co-Mediation offers a level of insight, balance, and impartiality that enhances productivity in the mediation room.

Some Co-Mediators are both licensed attorneys who have chosen to undertake neutral dispute resolution practice. As such, they can offer different interpretations of the law and different anecdotal experiences of their own, showing the parties at hand how inconsistent court-based outcomes can truly be and encouraging them to take ownership over their futures and not defer to judicial discretion.

Some Co-Mediators are both mental health professionals who lend their uniquely therapeutic approach to the process. As such, they can explore the underpinnings of the parties' positions, helping them unearth underlying issues that might be informing a negotiation impasse and encouraging them to take ownership over these motivations in an effort to move forward.

Other Co-Mediation teams are truly interdisciplinary, combining the expertise of an attorney mediator with that of legally trained mediator with mental health training or a mediator with financial training. These interdisciplinary duos can offer parties the combined benefits of therapeutic exploration paired with legal analysis, or financial reality testing paired with court-house insights. Interdisciplinary Co-Mediation teams can offer the best of both worlds – exposing clients to practitioners familiar with the law while ensuring that therapeutic or financial concerns are fully addressed so that conversations can proceed in a productive and transparent fashion.

i. Structure and Efficiency: The Format and Benefit of Co-Mediation

⁸⁴ Jacqueline Nolan-Haley, Informed Consent in Mediation: A Guiding Principle for Truly Educated Decisionmaking, 74 Notre Dame L. Rev. 775 (1998-1999), http://ir.lawnet.fordham.edu/faculty_scholarship/274 (stating that “informed consent requires that parties be educated about the mediation process before they consent to participate in it, that their continued participation in mediation be voluntary, and that they understand and consent to the outcomes reached in mediation”, which is often overlooked when courts mandate mediation).

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Professionals who co-mediate do so for a variety of reasons. Some find that they are able to be more efficient by bringing different professional perspectives into the conversation. Others find that clients are more likely to believe in the mediators' neutrality when there are two individuals to speak to. The many reasons for co-mediating also inform the structure that co-mediators choose: conjoint practice, collaborative practice, issue allocation, and inter-gender practice.⁸⁵

In structuring a co-mediation team, mediators can learn from approaches to team-building in the business world. They can consider what kind of dynamic they wish to develop with their co-mediating partner as well as what kind of atmosphere they wish to foster in the mediation room. In conjoint mediation, the mediators consistently function as a two-person team.⁸⁶ They appear at all sessions together, often require that phone-calls and email communications involve both mediators, and address all issues fluidly without subject-area role distribution. In collaborative mediation, mediators may start the process as a two-pair team, but then switch off, delegating issues or sessions based on expertise and scheduling. When mediators utilize co-mediation for issue allocation, they may consistently divide substantive subject areas and meet with parties separately to discuss those areas. For example, when a therapist and attorney mediator co-mediate with issue allocation, the parties may meet with the therapist separately to resolve parenting concerns, the attorney separately to resolve equitable distribution concerns, and only meet with the mediators jointly if there are overlapping topics or challenging points of disagreement. Lastly, some co-mediators find that inter-gender pairs of mediators can lend a level of balance to the mediation equation simply by reflecting the two genders of the parties in the room, if the genders differ. This inter-gender validation can be invaluable for both parties.

A co-mediation team offers benefits to practitioners and families alike. Practitioners are able to share responsibilities and assist one another when the parties are struggling to come to terms. Practitioners can also demonstrate effective communication skills by acting in an empathic and productive fashion vis a vis one another, showing the parties how to communicate constructively so that the mediation sessions are more effective. While co-mediation is more expensive than solo-mediation, it is also more comprehensive. Co-mediating interdisciplinary specialists can lend extra levels of professional insight, while ensuring that the process remains neutral and unbiased. Where a sole mediator might struggle with internal biases, co-mediators can keep one another in check if any biases start to come through in the mediation.

ii. Co-Mediation Teambuilding and How Team Training Benefits Clients

When building the Co-Mediation team, professionals can focus on streamlining the intimate, two person dynamic. Unlike in the multi-expert dynamics that may be found in traditional litigation or collaborative practice, co-mediators have the unique opportunity to develop a seamless relationship with just one counterpart and with other experts, as may be needed.

⁸⁵ FORREST S. MOSTEN, *THE MEDIATION CAREER GUIDE* (2001).

⁸⁶ MOSTEN, *supra* note 85. *See also* Susan J. Gamache, *Family Peacemaking with an Interdisciplinary Team: A Therapist's Perspective*, 49 FAM. CT. REV. 53 FAMILY COURT REVIEW 378 (2011).

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Professionals who plan to co-mediate can first establish whether they want to work with a member of another profession or another gender. Then, they can work on their co-mediation rapport. This rapport can be built through formal trainings, personality assessments, listening exercises, and role plays. It can also be built through coffee dates, social excursions, and the development of a deeper direct relationship.

Once the members of the co-mediating pair are invested in one another as individuals, respect one another, and have shared empathy and listening skills, they can work as a balanced unit that complements one another as well as the clients. This informs efficiency in the mediation room, averts conflicts due to disagreements between professionals, and provides clients with a better service overall.

C. Collaborative Practice

Collaborative Family Law Practice first entered the dispute resolution scene in the early 1990s. Primarily utilized to resolve matrimonial disputes, this new approach to dispute resolution sought to upend the belligerent nature of problem solving by removing disputes from courtrooms and instead hosting problem-solving negotiations exclusively outside of court.⁸⁷ Most importantly, unlike judicial orders passed down throughout a litigation process or mandated mediation sessions that the parties did not voluntarily initiate, Collaborative Practice offers the full benefits of interdisciplinary teamwork and truly requires voluntary informed consent.⁸⁸

Parties who participate in Collaborative Practice sessions are represented by their own attorneys who fully commit to helping the parties resolve their dispute out of court⁸⁹ These attorneys sign a contractual agreement that prevents them from subsequently representing the parties in litigation if negotiations sour and the parties chose to turn to the court system, providing a substantial incentive for the attorneys to encourage settlement.⁹⁰ This is commonly referred to as the disqualification clause. The disqualifications clause is the “sole constraint” for client-centered decision-making.

In order for the Collaborative Family Law Practice model to work, all parties involved in the negotiations must truly commit to the non-court process. Attorneys must agree that they will withdraw their representation if collaborative negotiations fail. Parties must understand the parameters of the collaborative process in order to make an informed decision to participate, and

⁸⁷ MOSTEN, COLLABORATIVE DIVORCE HANDBOOK, supra note 26; Forrest S. Mosten, *Collaborative Law Practice: An Unbundled Approach to Informed Client Decision Making*, 2008 J. DISP. RESOL. (2008); Direnfeld, supra note 54.

⁸⁸ ETHICS SUBCOMMITTEE, A.B.A SECTION OF DISPUTE RESOLUTION, SUMMARY OF ETHICS RULES GOVERNING COLLABORATIVE PRACTICE (OCT. 2, 2008)(implying, by omission, that only collaborative attorneys have a duty to obtain clients’ informed consent when selecting a divorce process option).

⁸⁹ MOSTEN, COLLABORATIVE DIVORCE HANDBOOK, supra note 26; Forrest S. Mosten, *Collaborative Law Practice: An Unbundled Approach to Informed Client Decision Making*, 2008 J. DISP. RESOL. (2008); Direnfeld, supra note 54.

⁹⁰ MOSTEN, COLLABORATIVE DIVORCE HANDBOOK, supra note 26; Forrest S. Mosten, *Collaborative Law Practice: An Unbundled Approach to Informed Client Decision Making*, 2008 J. DISP. RESOL. (2008); Direnfeld, supra note 54.

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must then agree to engage in good faith collaborative negotiations, premised on honest and open disclosure of all relevant information.⁹¹ In many settings, parties also agree to involve additional experts, including mental health professionals, parenting consultants and child specialists, financial advisors, appraisers and evaluators, accountants, vocational experts, and sometimes even members of the clergy. Each professional involved in the collaborative settlement negotiation commits to the integrity of the process, as well as the goal of helping the parties reach a resolution without resorting to litigation.

Within the Collaborative Practice Team, certain fixtures already exist. Contractual agreements regarding confidentiality, financial disclosure, and a commitment not to litigate create a structure for those participating in the process.⁹² Agreements regarding mutual respect and insulation of the children from the stress of the negotiations establish behavioral expectations and set the tone for the collaborative negotiations. Communication via in-person meetings rather than impersonal motion practice or telephonic negotiations helps assure all parties that they have direct access to all information, are fully aware of their opposing counterpart's positions, and have the opportunity to interpret their counterpart's tone and body language for themselves. These Collaborative Practice structures serve as "enabling conditions" for teamwork within the Collaborative Family Law Practice model, although they are not yet as refined as the structures that exist in the business or healthcare worlds.

While temporary teams come together to assist parties in conflict during Collaborative Practice negotiations, these collaborative cohorts are often in the early stages of understanding what it means to work as a team. Team members generally receive little to no joint training or teambuilding attention. While well-meaning professionals can collaboratively assist parties that commit to the Collaborative Family Law Practice model, they cannot be truly defined as a team until further team-building training and development are developed and implemented.

i. Building a Collaborative Team

Within the landscape of Collaborative Family Law Practice, there are already a number of different Collaborative Team models that exist. Some collaborative efforts consist of attorneys alone, while others involve different kinds of professionals. Some teams are pre-formed and the inclusion of all members is expected, or even required. These are often labeled "set or formed teams". Other teams shift or only come together as needed, reassembling an ever-changing cast of characters for each new case. This is called the "referral" or "unbundled" model.

Professionals who engage in Collaborative Family Law Practice often fail to distinguish between serving as an interdisciplinary group of experts and working as an actual team. Many matrimonial attorneys interact with financial advisors, forensic evaluators, and other professionals in an interdisciplinary fashion. They work together on cases, cross-refer clients to one another, and

⁹¹ John Lande & Forrest S. Mosten, *Collaborative Lawyers' Duties to Screen the Appropriateness of Collaborative Law and Obtain Clients' Informed Consent to Use Collaborative Law*, 25 OHIO ST. J. ON DISP. RESOL. 347 (2010)

⁹² MOSTEN, *COLLABORATIVE DIVORCE HANDBOOK*, supra note 26; Forrest S. Mosten, *Collaborative Law Practice: An Unbundled Approach to Informed Client Decision Making*, 2008 J. DISP. RESOL. (2008); Direnfeld, supra note 54.

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call each other for input and advice. Building a Collaborative Practice Team, however, requires something more. It requires a consistent commitment to creating unified values, practice patterns, and developing structural mechanisms that hold each professional individual accountable to a collective goal.

a. Team Makeup

Collaborative practitioners have different opinions about who should be a consistent member of the Collaborative Practice Working Team and who should serve as an occasional partner to the process. Some Collaborative Family Law Practice models require parties to engage the services of mental health professionals, financial advisors, divorce coaches, appraisers, and child representatives, while others may offer the services of these ancillary individuals but only mandate the involvement of some. The only mandatory members of the Collaborative Practice Team, who span all team types, are the two parties involved in the dispute, and their respective attorneys.⁹³

According to the Uniform Collaborative Law Act (“Uniform Act”),⁹⁴ the Collaborative Practice Team need only include the parties to the negotiation, and their respective attorneys who have signed an agreement to recuse themselves if settlement negotiations fail and the parties must proceed to trial. In this minimalist approach to Collaborative Family Law Practice, the parties and their attorneys meet for a series of four-way negotiations. During these negotiations, they attempt to resolve all issues in a constructive fashion. In many such settings, attorneys modify their advocacy practice and allow their clients to lead the conversation as primary negotiators. This empowers the parties to speak for themselves while their attorneys focus on facilitating the conversation through shared interests and open information.⁹⁵ The approach is non-hierarchical, and quite different from the courthouse model where clients sit silently while attorneys make arguments and run the case. Aside from addressing the roles of attorneys, clients, and their shared goal of settlement, the Uniform Act does not offer additional team requirements. The Uniform Act does not require the involvement of other team members. The Uniform Act restricts its guidance to solely structural and regulatory parameters.

Alternatively, some Collaborative Practice Teams provide that a neutral mental health professional attend all meetings, in addition to the attorneys and parties. According to the Collaborative Law Institute of Texas, most Collaborative Practice Teams at the institute include attorneys, neutral mental health professionals who facilitate the meetings and help parties focus on their shared interests, neutral financial professionals who help the parties analyze their past and anticipated assets and spending, child specialists who teach co-parenting skills and recommend

⁹³ MOSTEN, COLLABORATIVE DIVORCE HANDBOOK, *supra* note 26; Forrest S. Mosten, *Collaborative Law Practice: An Unbundled Approach to Informed Client Decision Making*, 2008 J. DISP. RESOL. (2008); Direnfeld, *supra* note 54. Lande, *supra* note 70.

⁹⁴ UNIFORM COLLABORATIVE LAW RULES, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, (2010), http://www.uniformlaws.org/shared/docs/collaborative_law/uclranducla_finalact_jul10.pdf; *See also*, Forrest S. Mosten & John Lande, *The Uniform Collaborative Law Act’s Contribution to Informed Client Decision Making in Choosing a Dispute Resolution Process*, 38 HOFSTRA L. REV. 611 (2009).

⁹⁵ *See* GLOBAL COLLABORATIVE LAW COUNCIL, PARTICIPATION AGREEMENT 3 (2004), http://www.collaborativelaw.us/articles/GCLC_Participation_Agreement_With_Addendum.pdf;

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parenting arrangements, appraisers who value property and assets, accountants who help trace separate and marital property, and individual therapists who assist the children or parties individually.⁹⁶ Within this model, the parties, attorneys, and neutral mental health professionals attend all meetings, while the financial professionals, child specialists, appraisers, accountants, and individual therapists join the team on an “as needed” basis. While this team allows for some additional customization, where parties can involve experts in other professional fields if their concerns call for such experts, neutral mental health professionals are team fixtures and parties do not engage in Collaborative Practice meetings without them.

Lastly, some collaborative teams mandate the involvement of even more professionals. While parties always have access to as many professionals as may be relevant, the Collaborative Family Institute of Greater Miami suggests that all parties utilize the services of their attorneys, mental health professionals, and financial experts throughout their collaborative negotiation process, strongly discouraging parties from reaching agreements without the professional involvement of at least these three experts at all times.⁹⁷

According to Gary Direnfeld, these different team types can be categorized as uni-disciplinary, multidisciplinary, interdisciplinary, or transdisciplinary. Where two lawyers represent two clients and no other professionals join the negotiation, only one professional discipline is employed, forming a uni-disciplinary team. Where only these same individuals are present at negotiations, but lawyer refer clients to external ancillary professionals who offer input that the parties bring back to the four person negotiation, a multidisciplinary team may exist. An interdisciplinary team only arises when external professionals join the lawyers and clients at the negotiation table to share their subject-specific recommendations with the entire group. The last, and most fluid approach forms a transdisciplinary team, where the experts in the room, including lawyers and financial professionals, are not relegated to their specific fields but, instead, mutually share data and weigh in on one another’s practice areas during the negotiations.⁹⁸

b. Structuring and Consistency

In structuring the Collaborative Practice Team, practitioners should evaluate whether they wish to prioritize team consistency or client choice. Most Collaborative Family Law Practice organizations recommend the involvement of various professionals, but some Collaborative Practice Teams allow the parties themselves to select each professional member of the Collaborative Practice Team prior to commencing negotiations, while others present the parties with a finite list of professionals and introduce the Collaborative Practice Team as a collective fait accompli.

There are benefits and pitfalls to both approaches. On the one hand, Collaborative Family Law Practice hinges on the voluntary commitment of the parties. Where parties are able to select each team member and interview their own attorneys, mental health professionals, and financial

⁹⁶ See THE COLLABORATIVE LAW INSTITUTE OF TEXAS, <http://www.collablawtexas.com/the-collaborative-law-approach>.

⁹⁷ See COLLABORATIVE FAMILY LAW INSTITUTE, <https://collaborativefamlaw.com/>.

⁹⁸ See Gary Direnfeld, *Understanding Collaborative Team Models*, YOUR SOCIAL WORKER (2009).

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experts, they have more decision-making power and ownership over the process. However, in such cases, the professionals that come together to assist the parties may not have worked together in the past and may not function as a cohesive team.

To truly develop and hone teamwork skills among Collaborative Family Law Practice professionals, the Collaborative Practice Team may need to feature a consistent cohort rather than a series of shifting team members. Where the same two attorneys, one or two mental health professionals, and one or two financial advisors work together on a consistent basis, the professionals develop an understanding of one another's styles and bottom lines. They can create protocols for negotiation behavior, unify settlement goals, and even participate in joint trainings and teambuilding exercises. The consistent Collaborative Practice Team model is most likely to demonstrate the strongest team-working skills and, as a result, offer the most efficient guidance for parties in crisis.

c. Team Functioning: What does It Mean to Build a Collaborative Team

When building the Collaborative Practice Team, certain key questions arise. How does such a team function? What is the essence of such a team? Do team members need to share common values? Should team members train together? Should fee levels for each professional be standardized and/or equal? These questions, and more, have yet to be formally addressed by Collaborative Family Law practitioners, and so, we begin to address them here.

All members of a Collaborative Practice Team, including the parties, have the benefit of a clearly defined goal – amicably settling the issues at hand without using the court system. This goal is outlined in practice agreements, reinforced by attorneys' recusal requirements, and championed by neutral facilitators who try to keep the parties on track. While many other multi-disciplinary teams need to devote time and energy to establishing goals, this is the most natural, unifying component of the Collaborative Practice Team.

Communication protocols, however, are less refined. The majority of Collaborative Practice Team communications take place during the meetings themselves. However, this assumes that all team members are already on the same page when they enter the negotiation room, have the same cooperative skills to offer, and understand one another's styles.⁹⁹

Practitioner reliance on assumed skills is risky. Attorneys, mental health professionals, and financial advisors attend different kinds of academic institutions and receive very different types of professional training. Their approaches to tone, body language, and substantive discourse are rarely alike. While diverse styles can enhance a team, certain basic, shared communication skills are integral to successful co-negotiation. For example, all members of the Collaborative Practice Team should know how to reframe what the parties are saying, focus on party interests, and prioritize productive negotiation over posturing.

Furthermore, there is little consensus regarding whether or not Collaborative Practice Team members should communicate with one another in between sessions. Some practitioners cease

⁹⁹ Some micro-teams are created within the broader team, between attorneys and their specific client, professionals, clients and non-attorney professionals, et al. These micro-teams also need governing protocols in order to ensure that they support the goals of the broader team.

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communication in between sessions, while others entertain emails, phone calls, and in person meetings. The ground rules around these communications are very shaky. Should everyone be included on communications with a neutral mental health professional so that there is no development of bias? Does this discourage the parties from proceeding with confidential and strategic communications with their respective attorneys? Should the professionals communicate with one another in between sessions without the parties' involvement during a process that aims to prioritize party interests and autonomy? There is much work to be done around creating a structure for Collaborative Practice Team communication protocols.

Another important question is that of team uniformity. Professional team members come from different professions, ethical requirements, and trainings. They are often solo practitioners who have their own practice values and logistical realities, including fee structures and professional development priorities.

It is important for members of a Collaborative Practice Team to share common values. In addition to being committed to settlement, they must understand the sensitivities associated with co-parenting and healthy child development, as well as the autonomy of the two individuals at the table trying to restructure their lives and move on with integrity. In order to achieve this, joint training sessions are crucial. While each professional brings their own expertise as an attorney, mental health professional, or financial professional to the table, there are some negotiation skills and substantive facts about couples going through a divorce that they should all be equally familiar with. It is also important for the professionals involved to charge comparable fees and offer written fee estimates, so that the parties have appropriate financial expectations and feel equally comfortable with all professionals involved.

ii. What Could This Look Like in Practice?

In order to unify Collaborative Practice Team characteristics, consistent communication between team members is key. Rather than acting as solo professionals who come together for a specific negotiation or valuation, professionals engaging in Collaborative Family Law Practice might alter their approach and emphasize collaborative team development. They should focus on ensuring that they have a unified approach regarding how to navigate client meetings, and they should also become well acquainted with one another's professional styles in order to avoid conflicts between team members.¹⁰⁰

First, members of the Collaborative Practice Team can alter their solo-practitioner habits and meet more regularly outside of their meetings with the parties. These additional meetings can take place in between sessions, where lawyers, mental health professionals, and financial advisors can work together to plan their next meeting and discuss how best to assist the specific parties at hand. Additionally, team members can make an effort to debrief after each session. Such debriefing meetings would ensure that all Collaborative Practice Team Members are in agreement as to what

¹⁰⁰ Some recommendations regarding this integration is offered during full-team, interdisciplinary collaborative law trainings that are offered by individuals such as Hal Bartholomew. See TWO DAY INTRODUCTORY INTERDISCIPLINARY COLLABORATIVE PRACTICE TRAINING, DIVORCEPAGE.COM (Apr. 28, 2016), <http://www.divorcepage.com/Classes-Seminars/Two-Day-Basic-Interdisciplinary-Collaborative-Training.pdf>.

INTERDISCIPLINARY TEAMWORK IN FAMILY LAW PRACTICE

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transpired during the meeting. They can work together to produce unified summaries of each meeting, ensuring that no one misremembers or misinterprets what occurred.

Second, members of the Collaborative Practice Team should meet at least once prior to the commencement of every collaborative case in order to discuss how they plan to navigate conflicting perspectives among team members. While involving different professionals in the process is certainly an asset and can lend to more creative brainstorming and multifaceted analysis, differing opinions can also confuse clients. If a mental health professional makes a parenting recommendation that is in conflict with legal parameters, or a legal professional makes a recommendation that is in conflict with financial regulations, clients can find themselves at a loss as to whose opinion they should heed. If members of the Collaborative Practice Team meet in advance, take breaks during sessions to debrief, and create a protocol for how to address conflicts between professionals that might arise during a collaborative negotiation, they can avert many of the pitfalls of more disorganized interdisciplinary practice.

IV. MATRIMONIAL PRACTICE RECOMMENDATIONS AND CONCLUDING CONSIDERATIONS

Most matrimonial attorneys find themselves intersecting with professionals from other spheres at one time or another. Therapists who treat patients dealing with complex emotions often cooperate with those patients' attorneys when discussing diagnoses and advocacy. CPAs assist clients who are struggling to understand their assets and liabilities in an effort to complete their statements of net worth. Estate planning attorneys and business attorneys help matrimonial attorneys evaluate the impact of family trusts and inter-family partnerships on a pending divorce case. While matrimonial attorneys may not work with all of these professionals as members of a concerted "team", approaching these professional counterparts as teammates could streamline their inevitable collaboration.

The matrimonial field has great potential for growth of teamwork. In order to continue to support industry development, matrimonial practitioners might consider the following recommendations:

1. Matrimonial practitioners need to recognize that teamwork is important. Where professionals have become accustomed to working alone, they may overlook the significant benefits that teamwork can offer. Acknowledgment is the first step to any forward motion and recognition of teamwork as an asset to matrimonial practice is the first step towards team practice.
2. Attorney training begins in law school. Law schools should incorporate team-based training into their curricula. Such trainings could offer students an opportunity to develop important skills, as well as help shift attitudes regarding a historically protectionist profession. Through classroom sensitivity training and collaborative, interdisciplinary integration between law students and members of other graduate programs, future attorneys can first learn how to work with members of other fields within the safe and nurturing walls of their legal educational institutions.

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3. There are great lessons to be learned from the business and healthcare fields. Matrimonial practitioners can study these fields and seek guidance from these other professionals regarding team structuring and training. There is no reason to fully reinvent the wheel, and much insightful work has already been done by members of the business and healthcare fields.
4. Pilot Programs focused on Teamwork can offer a helpful model for testing possible structures and approaches to training. Just like as the pilot programs that first introduced mediation via community justice centers in the 1980s, Matrimonial Team Pilot Programs can educate practitioners and parties alike about the benefits and possibilities of team-based collaborative dispute resolution. For example, the IAALS Honoring Family Initiative in Denver promotes a team-based approach to handling family disputes by involving various stakeholders in improving access to legal, mental health, and financial resources while collaborating with members of the court system.¹⁰¹
5. Matrimonial and Family Law Academics should commit to further researching the possibilities of teambuilding. The Collaborative Law movement provides members of the field with a successful laboratory for exploring possible structuring, training, and teambuilding avenues. Practitioners should commit to a continued study in an effort to evaluate what works, what doesn't work, and what can streamline efficiency and enhance client satisfaction.

While some matrimonial practitioners may already see themselves as members of teams, structural inconsistencies and unrefined definitions continue to cause confusion. Few matrimonial attorneys devote time to defining how their teams should be built and trained, and how their goals can be more thoroughly unified. Even fewer practitioners have considered what kinds of teambuilding programs and exercises might benefit their joint practice. Many questions remain, and there is a great need for cross-professional team training, program development, and further research of team efficiency in the world of matrimonial practice.

¹⁰¹ See, *IAALS Honoring Families*, IAALS (last visited Sept. 4, 2017), <http://iaals.du.edu/honoring-families>; Rebecca Love Kourlis, Melinda Taylor, Andrew Shepard & Marsha Kline Pruett, *IAALS' Honoring Families Initiative: Courts and Communities Helping Families in Transition Arising from Separation or Divorce*, 51 FAM. CT. REV. 351 (2013).