

INTRODUCTION TO THE SIBEN & SIBEN LECTURE AND
COMMENTARY: INTERDISCIPLINARY TEAMWORK IN THE
FAMILY PRACTICE

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Sometimes academic life is simultaneously fun and productive for the common good. This mini symposium arising from the Siben & Siben lecture in family law at the Maurice A. Deane School of Law at Hofstra University is one of those times.

A bit of background: I have the honor of being designated the Siben & Siben Distinguished Professor of Family Law at the Maurice A. Deane School of Law at Hofstra University. The Siben Chair was established in 1984 and I became its occupant on September 1, 2017. The generosity of the Siben firm also gives the Siben & Siben Professor the ability to choose a lecturer each year to engage the Hofstra Law community in serious discussion of family law issues.

My choice for the first Siben & Siben lecturer of my term was Forrest (Woody) Mosten. I have known Woody for many years. He is a force of nature in shaping modern divorce practice to the needs of families and children. For starters, Woody created a model of divorce practice in which he counsels clients, represents them in collaborative law, mediates their disputes, but never goes to court. He has inspired generations of law students to consider alternatives to a litigation practice as an adjunct professor at University of California—Los Angeles Law School teaching courses in family law practice and the lawyer as peacemaker. He originated the term “unbundled, legal services,” a concept which has done so much to help low- and middle-income clients achieve access to justice. He has professionalized and diversified the practice of mediation and collaborative law. He is the author of six books and too many articles to mention. He is a mediation and collaborative law trainer of great renown and an inspiring speaker. Woody is active in many bar associations and law reform activities. He is the guiding spirit of the American Bar Association’s Louis Brown Client Counseling Competition. And, most importantly, he is a wonderful human being. He brings people along by optimism, persuasion, and example.

I invited Woody to be the Siben lecturer for 2017. He then bought tickets to see *Hamilton* on Broadway (his wife and partner Jody is an avid theater goer) and firmed up plans to come to New York to deliver the lecture.

Simultaneously, Hofstra Law School’s Center for Children, Families and the Courts (of which I am Executive Director) was planning a conference with the New York Chapter of the Association of Family and Conciliation Courts (AFCC—NY) and FamilyKind, a New York City—based not-for-profit organization whose mission is to help parents, children, and couples cope with separation and divorce. When I told the organizing committee that Woody was coming to New York to give the Siben lecture, it decided to make it the keynote speech for the conference we were planning.

Thus, the Siben lecture became the centerpiece of a jointly sponsored conference entitled *Interdisciplinary Collaboration in Family Law: The Real and the Ideal* held at Hofstra Law School on November 10, 2017.¹ The conference was dedicated to J. Herbie DiFonzo, who was scheduled to

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moderate a panel before his untimely death. At the beginning of the conference, we showed the video of his wonderful speech to the Hofstra Law students after being chosen as teacher of the year in May 2017, which ended with his trademark: “Let’s rock and roll!”²

Conference attendees took Herbie’s command to heart. The goal of the conference was, as its title explains, to explore interdisciplinary collaboration in family law but in a highly interactive and participatory way. Woody’s lecture on *Interdisciplinary Teamwork in Family Law Practice* set the appropriate tone. A particularly memorable moment was Woody’s showing a video of a string quartet playing in perfect harmony and commenting that interdisciplinary teams in family law representation could achieve such beautiful results by working together.³ Distinguished commentators then assessed Woody’s address from their diverse professional perspectives.

A panel on ethics featured discussion of difficult issues like the different disclosure obligations of questionable behavior by clients of lawyers who work with mental health professionals. We polled our interdisciplinary audience on the results. Another panel delivered “Ignite” (short, focused discussions of a single good program) to spark discussion of what the future of interdisciplinary collaboration in divorce practice might look like. The audience (which included about sixty law students) participated in lively question-and-answer and comment sessions after each panel. When not in formal session, conference participants discussed posters of *Family Court Review (FCR)* student written notes with the authors.

The goal of this mini symposium is to capture some of the substance and the spirit of the Siben Conference. It focuses on an article by Woody and his coauthor Lara Traum (an attorney and mediator in the greater New York area) arising from his Siben lecture. Lara is the former editor of the Cardozo Law School *Journal of Dispute Resolution*. Woody met her when he was invited to speak at a journal symposium. Since then Lara and Woody have coauthored three articles together, demonstrating how involvement of law students in cutting-edge issues such as interdisciplinary teamwork and law reform can shape a lawyer’s career.

A printed article cannot, of course, reproduce the notes of the string quartet that Woody played for the audience at the Siben lecture itself. Nonetheless, Woody and Lara’s article provides inspiration and food for thought for those concerned about the future of divorce practice for a wider audience of *FCR* readers. Woody and Lara argue that lawyers should think about teamwork to provide the highest levels of service to their clients and families. The adjustments for parents and children that divorce requires are not only in legal relationships but also in emotional and financial relationships. They are best addressed holistically rather than in separate professional compartments and addressing them holistically requires interdisciplinary teamwork. This is a lesson that business and other human services professionals have already learned but which divorce practice has not adapted.

Woody and Lara provide numerous examples of successful teamwork in business, health care, and mental health care. They analyze interdisciplinary collaboration in divorce cases—in litigation, in mediation, and in collaborative practice—and draw lessons for the future of divorce practice. Of particular interest to me as a legal educator is their conclusion that “[I]aw 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 an historically protectionist profession.” This observation is supported by the article describing the empirical evaluation of law student learning in the Denver Resource Center that I coauthored in the last issue of *FCR*.⁴ That evaluation establishes that it is possible to do what Woody and Lara suggest.

The Hon. Jane Pearl, Paul Meller, and Larry Braunstein, the commentators who graced the Siben Conference with their perspectives on Woody’s speech, then reprise those roles here. Paul is a professor of psychology at Hofstra with whom the Law School has collaborated many times on interdisciplinary projects. I think readers will be fascinated by his concept of an interdisciplinary team representing a “Family Global Case”—“ongoing relationships of the parents and their children, the minimization of conflict in the future, the decrease in court recidivism, the ongoing growth and healthy development of children, and the financial stability necessary for each parent to meaningfully parent the children.” Jane is a family court judge in New York, a Ph.D. psychologist, and a

past president of AFCC–NY whose comment brings interdisciplinary teams into her courtroom. Larry is an active litigator and collaborative lawyer, a special professor at Hofstra Law School, and current co-president of AFCC–NY who focuses on the need for interdisciplinary teams in traditional representation.

Paul's, Jane's, and Larry's comments are followed by a joint comment from Nancy Retsinas, a lawyer, and Kathleen Zumpano, a marriage and family therapist, who did not attend the Siben conference but were there in spirit. Nancy and Kathleen train as an interdisciplinary team and have a leadership role in the Northwest in developing new perspectives in family law. Readers will, I think, benefit from the breadth of their sophisticated experience and understanding of the nature of interdisciplinary teamwork in family law representation.

My favorite philosopher, Yogi Berra, reminds us that "[t]he future ain't what it used to be." The Siben Conference and this symposium make me more confident and optimistic about the future of divorce practice than I was before. We are moving in the right direction of supporting families through difficult reorganizations through collaboration and teamwork between disciplines for the Global Case. That model will always be in conflict with the adversarial thinking/sole representation that animates the litigation process, but it is gaining support from the professions, from research, and from parents and children. The court system and our collective sense of community will benefit as it takes firmer and firmer hold. This mini symposium is a small thank-you to those who are making that future possible.

NOTES

1. The program for the conference can be found at <https://law.hofstra.edu/facultyandcenters/centers/ccfl/events/interdisciplinarycollaborationinfamilylaw/index.html> (last visited Feb. 12, 2018); Conference presentations (including Woody's Siben Lecture) are available on YouTube. See Hofstra Law, *Interdisciplinary Collaboration in Family Law: The Real and the Ideal*, YOUTUBE (Jan. 3, 2018), <https://www.youtube.com/watch?v=9pv6nLBnsR4>.

2. Herbie's speech can be found on YouTube. See Hofstra Law, *Herbie DiFonzo's Graduation Speech*, YOUTUBE (May 9, 2017), <https://www.youtube.com/watch?v=1hbhUwXwRTE>.

3. If you are interested in hearing the string quartet, see Dominic Alldis, *The Classical Experience: Performance and Teamwork in Organizations*, YOUTUBE (Jan. 27, 2016), <https://www.youtube.com/watch?v=ByUJRvPY2JU&feature=youtu.be>.

4. Marsha Kline Pruett et al., *Law Students on Interdisciplinary, Problem-Solving Teams: An Empirical Evaluation of Educational Outcomes at the University of Denver's Resource Center for Separating and Divorcing Families (RCSDF)*, 56 FAM. CT. REV. 100 (2018).

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INTERDISCIPLINARY TEAMWORK IN FAMILY LAW PRACTICE¹

Forrest S. Mosten and Lara Traum

For attorneys who engage in matrimonial practice, work is often performed by a sole practitioner. While members of other professions have already demonstrated that interdisciplinary practice and teamwork are integral to efficiency, client satisfaction, and career success, matrimonial attorneys are just beginning to work in deliberately constructed interdisciplinary teams. In this article, we examine the definition of teamwork and highlight the characteristics of an effective team, drawing examples from the business, medical, and mental health fields. We then determine how successful teams are built and explore the application of such approaches within matrimonial practice, offering recommendations for research and effective use of teams to help families that are facing conflict and reorganization.

Key Points for the Family Court Community:

- Lawyers need teammates, teams, and team-related skills to more fully help their clients and their families. The matrimonial field has great potential for growth in this arena.
- An emphasis on teamwork can revolutionize how legal professionals work and offer services from within their own firms and legal organizations.
- Teamwork is at the forefront of discussions in the business, medical, and mental health fields and should be at the forefront in the legal field as well.
- From standard litigation to co-mediation and collaborative practice models, matrimonial practice lands at the intersection of many professional disciplines and often requires multiparty and multiprofessional involvement.
- Building a collaborative practice team requires a consistent commitment to creating unified values, practice patterns, and developing structural mechanisms that hold each professional individual accountable to a collective goal.

Keywords: Collaborative Law Training; Collaborative Lawyering; Interdisciplinary Practice; Team Building; Team Training; and Teamwork.

I. 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.²

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. Health care teams have managed to improve services and clinical care by utilizing interdisciplinary assets to address complex health problems.³ 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 twentieth 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.⁴ 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.

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In this article, we strive to define the meaning of “teamwork” 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.

II. 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.”⁵ 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 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, including relationships, process costs, time, and emotional health.⁶ 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.⁷ 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.

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

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 health care 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.⁸ 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.⁹

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.¹⁰ The qualitative benefits of expert collaboration through interdisciplinary teamwork were generally overlooked.

Even during the twentieth century, individual inventors often received sole credit for new innovations, despite the fact that multiple inventors had actually collaborated on inventions, such as the cotton gin, telegraph, telephone, and light bulb.¹¹ While teamwork was always an integral aspect of innovation and creative problem solving, it was not until the second half of the twentieth 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 team building 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 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.

1. 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.¹² 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.¹³ 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. However, recent studies suggest that a generally interdependent approach might prove to be more fruitful.

2. Multidisciplinary Teams versus 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.¹⁴ 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.

3. 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 teams¹⁵ 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 health care 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 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.

1. Business Teams

The formal utilization of teamwork in the business world began in the twentieth 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 toward common goals.¹⁶ 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.¹⁷

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.¹⁸ 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/her role in effectuating these objectives, and committed to the project. As a result, each member understands that his/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' various employees, and establish different types of teams that can help the business function and grow.¹⁹ 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.²⁰

Functional teams serve as the traditional cornerstone of the business world as they come together within specific company departments.²¹ 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.²² 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*,²³ 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.²⁴ Cross-functional teams rely on this premise, and many companies have started to prioritize this model.²⁵

Leadership teams are typically quasi-cross-functional groups that consist of individuals who run their own functional teams.²⁶ 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.²⁷ These teams empower each employee to commit to an assigned or collectively determined goal and remain solely accountable for his/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.²⁸ 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 benefits of virtual teamwork have converted many into believers due to the sheer convenience of online mechanisms.

Quality circles comprise individuals who are specifically tasked with evaluating company workflow.²⁹ 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.³⁰

Lastly, task forces pull together expert individuals who evaluate niche topics or issues in a cross-functional manner.³¹ 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 to foster the team's development of an independent language that would interact with the Internet.³² The Ford Motor Company piloted a new approach to team efficiency when it developed assembly lines that streamlined the reliable output of automobiles.³³ 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.³⁴ Walt Disney's famous Team of Nine relied on the motivation of unified visionaries to create Mickey Mouse, Snow White, and Cinderella.³⁵

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 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 training 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.³⁶ 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 team building involve assuring that there is a clear reward 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”³⁷ that help teams thrive in the business world.

2. Medical Teams

In the health care 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-intentioned family members following his strict orders.³⁸ 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 health care 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. His/her toolkit does not contain laboratories and cannot perform electrocardiograms. Instead, the town doctor has become a general diagnostician and source for referrals, a gateway liaison to specialists’ waiting rooms.³⁹

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.⁴⁰ 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 twenty-first century, patients began to reminisce about the town doctor and his/her 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 s/he 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 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 health care system has started to evolve. Health care 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 problems.⁴¹ Upon evaluating patient needs with specialists' skills, team-based health care 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, health care 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 health care 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."⁴² Some examples of these health care teams include:

- (1) The Department of Veterans Affairs Patient-Aligned Care Teams (PACT), comprising a veteran, a registered nurse, a physician, a licensed practical nurse, and a clerical assistant, aims to provide interprofessional care coordination for veterans as a component of a patient-centered medical home. There are over 7,000 such teams throughout the United States.⁴³
- (2) The University of Pennsylvania Transitional Care Model, comprising hospital, primary care, home health, hospice, transitional nursing, and other health care staff, aims to provide at-risk chronically ill older adults and their families with transitional care services in a variety of care settings.⁴⁴
- (3) The Hospice of the Bluegrass Team in Kentucky, comprising 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.⁴⁵
- (4) The MD Anderson Cancer Center in Houston, Texas utilizes multidisciplinary teams, comprising medical oncologists, surgical oncologists, radiation oncologists, radiologists, pathologists, pharmacists, research and clinical nurses, and genetic counselors, aims to coordinate specialties and develop a comprehensive cancer care plan.⁴⁶

Interdisciplinary teamwork is now at the cornerstone of the health care industry. While they target different audiences and conditions, each of the health care teams discussed above utilizes interdisciplinary strategies to create a patient-centric system. Each team member learns about each 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.⁴⁷ Many more lives are saved and improved.⁴⁸ 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.⁴⁹

The interdisciplinary health care 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 health care 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. To build an effective team, team members receive training and feedback regarding their individual and collective contributions, shared goals, mutual support, and communication skills.⁵⁰ In a study of teamwork skills and required behaviors among health care 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.⁵¹ 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 professional practice. As a result of these trainings, health care professionals have created practical approaches to ensuring consistent communication and goal sharing.⁵² Best practices focus on the importance of 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 health care setting.

3. Mental Health Care Teams

Most contemporary mental health care protocols involve direct or indirect collaboration between mental health care 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 Health Care 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 health care.⁵³ In response to this social service crisis, the Program of Assertive Community Treatment was born.⁵⁴

The Program of Assertive Community Treatment, which later evolved into the modern-day Assertive Community Treatment (ACT) program, offered an integrated approach to community mental health service delivery to outpatients with functioning difficulties.⁵⁵ This program provides a patient-centric approach to mental health care that promotes the participants’ individuality and independence by emphasizing home visits and assessments by a core services team comprising a psychiatrist, case managers, social workers, nurses, substance use specialists, vocational rehabilitation specialists, and peer-support specialists.⁵⁶ 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 health care services has been recognized by the Substance Abuse and Mental Health Services Administration, the National Alliance on Mental Illness, and the Commission on Accreditation of Rehabilitation Facilities.⁵⁷

Today, the ACT model informs and inspires approaches to mental health service delivery across the country. For example, the BRIGHTEN Team in Chicago, comprising a patient, psychologist,

social worker, chaplain, psychiatrist, physical and occupational therapists, pharmacist, dietician, and primary care provider, aims to support and treat older adults with depression and anxiety.⁵⁸

Most notably, this team-based approach straddles multiple health care categories, particularly in the setting where patients suffer from conditions such as dementia and Alzheimer's disease.⁵⁹ 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.⁶⁰

b. Conditions Enabling Mental Health Care 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.⁶¹ 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.⁶²

Members of mental health caregiving teams often receive joint training to ensure that they adhere to standardized procedures so that patient needs are met with consistency and comprehensive knowledge.⁶³ Teams hold integrated meetings 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 nonpsychiatric team members. Mutual respect, comradery, and effective communication provide the enabling conditions necessary for mental health teams to function smoothly.

4. Legal Teams

While business, health care, 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 doctor. 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.⁶⁴ 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 England.⁶⁵

In contrast, lawyers in the United States 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,⁶⁶ 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.⁶⁷ Within their private practices, distrustful attorneys protect their client contact lists and restrict their colleagues' access to client databases. In business law, general counsels are usually 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 training or collective goal-building exercises. Instead, in these legal teams, one person strategizes while others carry the water and draft motions, and 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 toward addressing teamwork and team building in the legal industry comes hand in hand with the modern trend toward viewing law firms as businesses with increased specialization.⁶⁸ Just as in the business world, interdepartmental idea sharing and client sharing can boost overall law firm revenue. And just as in the health care 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 health care 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 nonlegal professionals.⁶⁹ These laws also dictate that referrals to external professionals must be nonexclusive, 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.⁷⁰ 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.⁷¹ 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, human resources directors, financial professionals, and social workers within a given firm can improve the product that many law firms offer and increase client 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 forty years, Hackman evaluated the character of team effectiveness.⁷² 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 the three most important ones—compelling direction, strong structure, and support.⁷³

1. Training Matrimonial Lawyers and Team Building

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

In the legal field, team building is still in its infancy. Some law schools, such as California Western School of Law, are starting to offer courses in teamwork.⁷⁴ 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 team-building techniques and education provided by other industries, such as medicine and business.⁷⁵ 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 health care professionals could help members of matrimonial teams improve their modes of communication and debriefing procedures. As discussed below, many interprofessional relationships already exist within matrimonial practice. Lessons from the business and health care fields can help turn these relationships into effective teams, focused on service delivery and client satisfaction.

2. 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.⁷⁶ At this stage, the patient controls the story. The patient describes symptoms, explains experiences, and highlights problems.

However, while the patient tells his/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 intravenous drip feeds. 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.⁷⁷

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 toward 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.

IV. HOW TEAMWORK CAN BE PART OF MATRIMONIAL PRACTICE

While matrimonial lawyers are used to practicing alone, the nature of family conflict resolution often requires multiparty and multiprofessional 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 toward 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 own 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 his/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.⁷⁸ 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 confidential, preliminary opinions to clients regarding possible case outcomes that, in turn, can help the clients decide whether they should accept a settlement offer or proceed to trial.⁷⁹

1. Experts Who Join the Team: Triage and Informed Consent

Experts involved with matrimonial litigation can improve their practices by learning from the health care 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.⁸⁰

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 at 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.⁸¹ Attorneys speak on behalf of their clients while in the courtroom, and final orders are 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.

Because 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 pretrial 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.

2. 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.⁸² 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 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 pretrial assessments and evaluations. Judges can receive streamlined reports that focus on concrete data and information. Team training that focuses on communication, neutrality, and family-dynamic sensitivity can improve matrimonial practice within the context of traditional litigation.

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.⁸³

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 a 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 courthouse 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.

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

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 with. The many reasons for co-mediating also inform the structure that co-mediators choose: conjoint practice, collaborative practice, issue allocation, and intergender practice.⁸⁴

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.⁸⁵ They appear at all sessions together, often require that phone calls and e-mail 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-person 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 intergender 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 intergender 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 empathetic and productive fashion vis-à-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.

2. Co-Mediation Team Building 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 multiexpert 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.

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 training, 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.⁸⁶ 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.⁸⁷

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 court⁸⁸ 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.⁸⁹ 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 noncourt 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 must then agree to engage in good-faith collaborative negotiations, premised on honest and open disclosure of all relevant information.⁹⁰ 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.⁹¹ 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 health care 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 team-building 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.

1. 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 preformed 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 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.⁹²

According to the Uniform Collaborative Law Act (Uniform Act),⁹³ 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.⁹⁴ The approach is nonhierarchical, 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 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.⁹⁵ 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.⁹⁶

According to Gary Drenfeld, these different team types can be categorized as unidisciplinary, 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 unidisciplinary team. Where only these same individuals are present at negotiations but the lawyer refers 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.⁹⁷

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 team prior to commencing negotiations, while others present the parties with a finite list of professionals and introduce the 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 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 training and team-building 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; thus 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 multidisciplinary 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.⁹⁸

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 between sessions. Some practitioners cease communication between sessions, while others entertain e-mails, 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 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 training. 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.

2. 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 to avoid conflicts between team members.⁹⁹

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 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 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 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 lead 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.

V. 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. Accountants 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 interfamily 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. 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 toward team practice.
- (2) Attorney training begins in law school. Law schools should incorporate team-based training into their curricula. Such training 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.
- (3) There are great lessons to be learned from the business and health care 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 health care fields.
- (4) Pilot programs focused on teamwork can offer a helpful model for testing possible structures and approaches to training. Just like 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 Institute for the Advancement of the American Legal System's (IAALS) Honoring Families Initiative in Denver promoted 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.¹⁰⁰
- (5) Matrimonial and family law academics should commit to further researching the possibilities of team building. The collaborative law movement provides members of the field with a successful laboratory for exploring possible structuring, training, and team-building avenues. Practitioners should commit to a continued study in an effort to evaluate what works, what does not 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 team-building 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.

NOTES

1. This article is based on Professor Mosten's presentation as the 2017 Hofstra Siben Lecturer at the Siben Symposium on November 10, 2017.

2. We wish to express our appreciation to Professor Andrew Schepard for his unwavering support of the theme of interdisciplinary teamwork for this article and for his many brilliant suggestions to improve our efforts as well as for his legendary leadership in the family law field that include his organization of the annual Siben Lecture and Symposium. We also wish to thank David Hoffman, founder of Boston Collaborative and one of the world's experts on team building, for his input for this article. 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 New York State Problem Solving Courts Flyer, NYCOURTS.GOV, https://www.nycourts.gov/courts/problem_solving/PSC-FLYER4Fold.pdf (last visited Feb. 19, 2017); RICHARD L. WIENER & EVE M. BRANK, *PROBLEM SOLVING COURTS: SOCIAL SCIENCE AND LEGAL PERSPECTIVES* (2013); Donald J. Farole Jr. et al., *Applying Problem-Solving Principles in Mainstream Courts: Lessons for State Courts*, 26 JUST. SYS. J. 57 (2005); John Lande & Forrest S. Mosten, *Family Lawyering: Past, Present, and Future*, 51 FAM. CT. REV. 20 (2013).

3. See generally *Why Is Teamwork in Healthcare Important*, HRH GLOB. RES. CTR., http://www.hrresourcecenter.org/HRH_Info_Teamwork (last visited Aug. 17, 2017) [hereinafter *Teamwork in Healthcare*]; Canadian Health Services Research Foundation, *Teamwork in Healthcare: Promoting Effective Teamwork in Healthcare in Canada. Policy Synthesis and Recommendations*, CAN. FOUND. FOR HEALTHCARE IMPROVEMENT (2006).

4. 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).

5. William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming...*, 15 L. & SOC'Y. REV. 631 (1981).

6. DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS* (2004).

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

8. 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, http://www.highperformanceteams.org/hpt_history.htm (last visited Feb. 19, 2018). For an example of a modern collaborative practice group, see Laura Banks et al, *Hunter-Gatherer Collaborative Practice*, 49 FAM. CT. REV. 249 (2011).

9. See HANDWERKER, *supra* note 8; KAGAN, *supra* note 8; BODWELL, *supra* note 8.

10. 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>.

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

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

13. See Cohen & Bailey, *supra* note 12; Langfred, *supra* note 12; Palus, *supra* note 12.

14. See Cohen & Bailey, *supra* note 12; Langfred, *supra* note 12; Palus, *supra* note 12.

15. See Cohen & Bailey, *supra* note 12; Langfred, *supra* note 12; Palus, *supra* note 12. 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, noncoerced 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.

16. BUSINESS DICTIONARY, <http://www.businessdictionary.com/definition/team.html> (last visited Aug. 17, 2017).

17. See 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>; 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/>.

18. See Romero, *supra* note 17; Wiesen, *supra* note 17.

19. See J.A. SWIFT ET AL., *PRINCIPLES OF TOTAL QUALITY* (3d ed. 2004); Beth Miller, *7 Team Types That Make Business Possible*, BUS. 2 COMMUNITY (May 17, 2012), [http://www.business2community.com/strategy/7-team-types-that-make-business-](http://www.business2community.com/strategy/7-team-types-that-make-business-possible)

possible-0177106#rrugfSHI24KYOL0u.97; Stephen J. Skripak, *Teamwork in Business*, PAMPLIN C. BUS. & VA. TECH LIBRAR. IES (2016).

20. See SWIFT ET AL., *supra* note 19; Miller, *supra* note 19; Skripak, *supra* note 19.

21. See SWIFT ET AL., *supra* note 19; Miller, *supra* note 19; Skripak, *supra* note 19.

22. See SWIFT ET AL., *supra* note 19; Miller, *supra* note 19; Skripak, *supra* note 19.

23. 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/>.

24. See Baxter, *supra* note 23.

25. See FORREST S. MOSTEN, *COLLABORATIVE DIVORCE HANDBOOK* 171 (2009).

26. See SWIFT ET AL., *supra* note 19; Miller, *supra* note 19; Skripak, *supra* note 19.

27. See SWIFT ET AL., *supra* note 19; Miller, *supra* note 19; Skripak, *supra* note 19.

28. See SWIFT ET AL., *supra* note 19; Miller, *supra* note 19; Skripak, *supra* note 19.

29. See SWIFT ET AL., *supra* note 19; Miller, *supra* note 19; Skripak, *supra* note 19.

30. See Baxter, *supra* note 23.

31. See SWIFT ET AL., *supra* note 19; Miller, *supra* note 19; Skripak, *supra* note 19.

32. See Jeff Palfini, *Four Great Teams in Business History*, CBS NEWS (Jan. 25, 2008, 3:00 AM), <https://www.cbsnews.com/news/four-great-teams-in-business-history>.

33. *Id.*

34. *Id.*

35. *Id.*

36. See 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>; Glenn Llopis, *6 Ways Successful Teams are Built to Last*, FORBES (Oct. 1, 2012), <https://www.forbes.com/sites/glennllopis/2012/10/01/6-ways-successful-teams-are-built-to-last/#68e6c8032b55>.

37. See *infra* Part III.C.

38. See generally Michael L. Barnett et al., *Physicians Patient-Sharing Networks and the Cost and Intensity of Care in US Hospitals*, MED CARE 152 (2012); T.M. Brown, *An Historical View of Health Care Teams*, in 12 RESP. HEALTH CARE 3 (George J. Agich ed., 1982); Pamela Mitchell et al., *Core Principles & Values of Effective Team-Based Health Care*, INST. MED. NAT'L ACAD. (2012).

39. See Barnett et al., *supra* note 38; Brown, *supra* note 38; Mitchell et al., *supra* note 38.

40. Barnett et al., *supra* note 38; Mitchell et al., *supra* note 38.

41. See generally *Teamwork in Healthcare*, *supra* note 3.

42. Mary Naylor et al., *Inter-Professional Team-Based Primary Care for Chronically Ill Adults: State of the Science*, ABIM Foundation Meeting Paper (2010).

43. Mitchell et al., *supra* note 38.

44. *Id.*

45. *Id.*

46. *Id.*

47. See Anna T. Mayo et al., *Teamwork in Health Care: Maximizing Collective Intelligence via Inclusive Collaboration and Open Communication*, 18 AM. MED. ASS'N. J. ETHICS 933 (2016).

48. See Jemima Frimpong et al., *When Health Care Providers Look at Problems From Multiples Perspectives Patients Benefit*, HARV. BUS. REV. (June 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.”).

49. See Amitha Kalaichandran, *Design Thinking for Doctors and Nurses*, N.Y. TIMES, Aug. 3, 2017, <https://www.nytimes.com/2017/08/03/well/live/design-thinking-for-doctors-and-nurses.html> (“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.”).

50. 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 U. ST. THOMAS L.J. (2017); Sandra G. Leggat, *Effective Healthcare Teams Require Effective Team Members: Defining Teamwork Competencies*, 7 BMC HEALTH SERV. RES. 17 (2007).

51. See Gulyas, *supra* note 50; Hamilton, *supra* note 50; Leggat, *supra* note 50.

52. See Gulyas, *supra* note 50; Hamilton, *supra* note 50; Leggat, *supra* note 50.

53. See Gary Direnfeld et al., *Collaborative Services and the Integration of Preschoolers with Special Needs* (1993) (unpublished manuscript); see also Leonard I. Stein & Mary Ann Test, *Alternative to Mental Hospital Treatment*, 37 ARCH. GEN. PSYCHIATRY 392 (1980).

54. See Helen Killaspy, *Assertive Community Treatment in Psychiatry*, 335 *THE BMJ* 311 (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 ASS'N* 64 (2011); Direnfeld et al., *supra* note 53.

55. Direnfeld et al., *supra* note 53.

56. *See id.*

57. *Id.*

58. Direnfeld et al., *supra* note 53; Mitchell et al., *supra* note 38.

59. Amita Patel & Mark Shideler, *Time for Teamwork*, 27 *PSYCHIATRIC TIMES* (Dec. 15, 2010), <http://www.psychiatrictimes.com/geriatric-psychiatry/time-teamwork>.

60. See Christopher Callahan et al., *Effectiveness of Collaborative Care for Older Adults with Alzheimer Disease in Primary Care: A Randomized Controlled Trial*, 295 *J. AM. MED. ASS'N* 2148 (2006) (discussing improvement in symptoms such as agitation and aggression).

61. See Josie Jenkinson et al., *Teamwork: The Art of Being a Leader and a Team Player*, 19 *ADVANCES IN PSYCHOL. TREATMENT* 221 (2013), <http://apt.rcpsych.org/content/aptcpsych/19/3/221.full.pdf>.

62. *Id.*

63. *Id.*

64. 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); Samantha Love, *Solicitor or Barrister? How to Choose the Legal Career That's Right for You*, *OXFORD ROYAL ACAD.* (Dec. 20, 2013), <https://www.oxford-royale.co.uk/articles/choosing-barrister-vs-solicitor-career-paths.html>.

65. 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.

66. See Larry L. Teply, *Law School Competitions in a Nutshell* (2003); Louis Brown & Forrest S. Mosten International Client Consultation Competition, www.brownmosten.com, last visited March 16, 2018.

67. See generally Janet Weinstein 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/> [hereinafter *Importance of Teamwork*].

68. *Importance of Teamwork*, *supra* note 67.

69. ABA CODE OF PROF. RESP. & OPINIONS ON ETHICS, R. 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).

70. ABA CODE OF PROF. RESP. & OPINIONS ON ETHICS, R. 7.2; Fiarman, *supra* note 69; Lande, *supra* note 69.

71. 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 nonequality, which leaves lawyers in charge, vitiates against true teamwork. Attorneys may wish to look to surgeon-nurse relationships in medicine for team-building guidance under such circumstances.

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

73. Haas & Mortensen, *supra* note 72. 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=it_item_page.bottom.

74. See Weinstein et al., *supra* note 67.

75. *Id.*

76. Ramesh Acharya et al., *Emergency Department Triage: An Ethical Analysis*, 11 *MBC EMERG. MED.* 16 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3199257/>.

77. F. Subash et al., *Team Triage Improves Emergency Department Efficiency*, 21 *EMERG. MED. J.* 542 (2004).

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

79. See Forrest S. Mosten, *Confidential Mini-Child Custody Evaluations*, 45 *FAM. L.Q.* 119 (2011).

80. 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> (some jurisdictions have legislation or court rules that either compel or suggest a team management approach).

81. See BINDER ET AL., *supra* note 6 (for a client-centered lawyer's approach).

82. See Mary Main et al., *Attachment Theory and Research: Overview with Suggested Applications to Child Custody*, 49 *FAM. CT. REV.* 426 (2011).

83. Jacqueline Nolan-Haley, *Informed Consent in Mediation: A Guiding Principle for Truly Educated Decision making*, 74 *NOTRE DAME L. REV.* 775 (1998) (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).

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

85. *Id.*; see also Susan J. Gamache, *Family Peacemaking with an Interdisciplinary Team: A Therapist's Perspective*, 53 *FAM. CT. REV.* 378 (2011).

86. MOSTEN, *supra* note 25; Direnfeld et al., *supra* note 53; Forrest S. Mosten, *Collaborative Law Practice: An Unbundled Approach to Informed Client Decision Making*, 2008 J. DISP. RESOL. 163 (2008).

87. ABA Sec. of Disp. Resol., Summary of Ethics Rules Governing Collaborative Practice (2009) (implying, by omission, that only collaborative attorneys have a duty to obtain clients' informed consent when selecting a divorce process option).

88. MOSTEN, *supra* note 25; Direnfeld et al., *supra* note 53; Mosten, *supra* note 86.

89. MOSTEN, *supra* note 25; Direnfeld et al., *supra* note 53; Mosten, *supra* note 86.

90. 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. DISP. RESOL. 347 (2010).

91. MOSTEN, *supra* note 25; Mosten, *supra* note 86; Direnfeld et al., *supra* note 54.

92. MOSTEN, *supra* note 25; Mosten, *supra* note 86; Direnfeld et al., *supra* note 54.

93. 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).

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

95. *See* THE COLLABORATIVE LAW INSTITUTE OF TEXAS, <http://www.collablawtexas.com/the-collaborative-law-approach> (last visited Feb. 17, 2018).

96. *See* COLLABORATIVE FAMILY LAW INSTITUTE, <https://collaborativefamlaw.com> (last visited Feb. 17, 2018).

97. *See* Gary Direnfeld, *Understanding Collaborative Team Models*, YOUR SOC. WORKER (2009), http://www.yoursocialworker.com/s-articles/collaborative_team_models.html.

98. Some microteams are created within the broader team, between attorneys and their specific client, professionals, clients and nonattorney professionals. These microteams also need governing protocols in order to ensure that they support the goals of the broader team.

99. 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>.

100. *See* IAALS Honoring Families Initiative, IAALS, <http://iaals.du.edu/honoring-families> (last visited Feb. 17, 2018); Rebecca Love Kourlis et al., *IAALS' Honoring Families Initiative: Courts and Communities Helping Families in Transition Arising from Separation or Divorce*, 51 FAM. CT. REV. 351 (2013).

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A PARADIGM SHIFT IN THE PRACTICE OF FAMILY LAW: A RESPONSE TO MOSTEN AND TRAUM¹

Paul J. Meller

In their article, *Interdisciplinary Teamwork in Family Law Practice*, Mosten and Traum promote the use of an interdisciplinary, team-based approach to family law practice. This commentary focuses on the two pronged shift in the current zeitgeist of family law practice. First, Mosten and Traum guide us away from an historically adversarial approach to family law practice, in which attorneys advocate for the legal rights of a single client, to a more holistic approach in which the focus is on the Family Global Case. Furthermore, the push toward Family Global Case shifts the focus away from discrete legal issues associated with reorganization to empowering families to self-determine through their reorganization. This shift follows the movement in both medicine and mental health away from direct intervention for people with disorders to promoting wellness for at-risk yet healthy individuals. The second prong of Mosten and Traum's approach is a movement toward more collaborative interdisciplinary functioning. However, the shift in the practice of family law from the sole practitioner working alone to being one member of a broader multidisciplinary team focusing on the future well-being of the family brings with it not only issues of professional role definitions but also the development of a new combined set of ethics and models for training. These are discussed in detail.

Key Points for the Family Court Community:

- Model for interdisciplinary practice.
- Promoting family wellness after reorganizations.
- Innovative approach to family law practice.

Keywords: Alternative Dispute Resolution; Family Global Case; Family Wellness; Interdisciplinary; and Zeitgeist Shift.

In his book, *The Structure of Scientific Revolutions*,² the philosopher of science, Thomas Kuhn, wrote that fundamental changes in any field occur through what he identified as scientific revolutions. These revolutions are demarcated by paradigm shifts in which there are substantive changes in the basic conceptualization, theoretical assumptions, and methods of inquiry of any given discipline. Kuhn identified the maintenance of the status quo through long and stagnant periods in which there are no fundamental changes in these basic parameters of the field as normal periods. When prior assumptions are demonstrated to be invalid, and basic beliefs are challenged, Kuhn indicated that the field enters into a crisis period. Crisis periods are driven not just by changing empiricism or enhanced scientific methodology but principally by changing scientific, cultural, or social zeitgeists. The basic assumptions and empirical evidence that is unveiled during the crisis period yields a new understanding of the world, a new and more evolved normal period is created. In their article,³ Mosten and Traum herald the emergence of not a mere shift in paradigms, in which strategies and tactics for addressing family reorganizations need to be changed, but rather a change in zeitgeist—moving forward the predominant ideas and long-held beliefs associated with the practice of matrimonial law and family reorganization. This shift in zeitgeists parallels Kuhn's movement from a normal period in a field to a crisis period, a fundamentally new era in matrimonial law.

The zeitgeist shift articulated by Mosten and Traum has two distinct tines.⁴ First, is a movement away from the *necessity* of conceptualizing a case in terms of competing for interest in a client-centered advocacy approach to one of promoting lasting wellness of the newly defined reorganized family, including the children, by focusing on the Family Global Case. The second fundamental

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shift advocated by Mosten and Traum is the call for interdisciplinary team-based approaches to address the needs of a complex system of families going through a reorganization. Mosten and Traum also indicate that in order to facilitate the first two changes in the zeitgeist of family reorganizations, a change in legal education from a system that is insulated and individualistic to one that is collaborative and interdisciplinary.⁵

Sitting just below the surface of the logistic and practice changes advocated by Mosten and Traum is the underlying basis of the zeitgeist shift: movement away from the benefit of a single client and toward the promotion of a healthy, newly reorganized family, through the focus on the Family Global Case.⁶ DiFonzo also espoused a movement from a single client approach in matrimonial matters.⁷ He indicated a shift away from the “Rule of One,” in which doctrine and presumptions facilitated outcomes with clear winners and losers in family reorganizations. The long-term well-being and functioning of the reorganized family was not essentially considered but left to the skill, caring, and mental health of the “winning” parent. DiFonzo believed that the focuses on the adaptive functioning of the reorganized family, including reduced conflict between the parents and especially a healthy parent–child relationship, should be considered over winning or losing in an adversarial process.⁸ Furthermore, a successful outcome of a marital reorganization should not be measured at the moment that a stipulation is signed or a judgment is entered but rather in the ongoing relationships of the parents and their children, the minimization of conflict in the future, the decrease in court recidivism, the ongoing growth and healthy development of children, and the financial stability necessary for each parent to meaningfully parent the children.⁹ This underlies Mosten and Traum’s call for the movement toward matrimonial case conceptualization in terms of the Family Global Case.¹⁰

Perhaps the most fundamental change promoted by Mosten and Traum is the most subtle one advocated for in their thesis, that is, the move toward the conceptualization of a family reorganization from a legal issue in which questions such as custody, parenting time, child support, maintenance, and equitable distribution must be addressed to how to empower families to move on to the next chapter in their life, in a conflict-limited manner, which facilitates the healthy development of the children. Mosten and Traum suggest that focus on the Family Global Case facilitates future family functioning by minimizing conflict, increasing constructive conflict resolution, facilitating the well-being of children and improving long-term child outcomes, improving parent–child relationships, and decreasing court recidivism. This is critical because, unlike other legal entities, such as business partnerships, that cease to exist upon final dissolution, families, especially those with children, continue to exist in perpetuity. Each of these benefits to the family will, in kind, improve consumer satisfaction and case efficiency and enhance career movement for the practitioner.¹¹

An important facet of focusing on the Family Global Case is that it protects children by providing them with a cloak of resilience. In the 1970s, Wallerstein and Kelly¹² warned us of the possible adverse outcomes of divorce on children. However, by the turn of the twenty-first century, researchers such as Amato and Keith¹³ and Amato¹⁴ made it clear that maladaptation was not an inevitable outcome for children of divorce. Rather, many children came through family reorganizations relatively unscathed. The determining issue was not divorce in and of itself but the level and frequency of pre- and postdivorce conflict.¹⁵

In 1990, Emory L. Cowen was awarded a lifetime achievement award for Distinguished Contribution to Psychology in the Public Interest by the American Psychological Association. In his acceptance address entitled *In the Pursuit of Wellness*,¹⁶ Cowen pressed the field to move past the old approach of diagnosing and treating affected individuals to create a psychology in which the focus is on prevention and wellness. The four pillars to wellness outlined by Cowen were: building competence, resilience, modifying social systems, and empowerment.¹⁷ These four pillars also underlie Mosten and Traum’s focus on the Global Family, that is, to help build healthy adaptive families, and most importantly children, in their postreorganization life.¹⁸ The shift toward the Global Family Case not only improves the lives of children and parents postreorganization but brings the treatment of reorganizing families in line with a broader cultural swing seen in medicine and mental health, that is, the reduction of the incidence and prevalence of maladies rather than the treatment of affected individuals. Focusing on the Family Global Case relies and builds on Cowen’s

four pillars and consequently will decrease the incidence and prevalence of postreorganization dysfunction, including ongoing conflict, poor parent–child relationships, poor developmental and mental health outcomes for children, and high rates of court recidivism for the parents.

The second component of the paradigm shift espoused by Mosten and Traum was moving toward an interdisciplinary team approach to address the needs identified in the Family Global Case.¹⁹ Mosten and Traum highlight the traditional role of the matrimonial attorney as the “legal wellness” provider, who individually carries the responsibility of vigorously representing the legal rights of their client through the dissolution of their marriage, in a manner not much different than they would in the dissolution of any other legal entity, such as a business partnership.²⁰ Equitable distribution and parenting plans must be considered along with other wants and needs of the client so that ultimately the attorney can advocate for their position developed in consultation with the attorney. In this lone-wolf model of legal advocacy in marital reorganization, Mosten and Traum indicated that other professionals are not conceptualized as a member of the team moving the client forward through their dissolution but rather as implements to be employed to bolster the advocacy of the position developed by the attorney and the client.²¹ However, Mosten and Traum endorse shedding the traditional assumptions and practiced approaches in matrimonial law for interdisciplinary team-based approaches for advocating for families going through a dissolution for several reasons. Among these were increased efficiency, client satisfaction, and consequently career success.²² The authors point out that in other fields such as medicine and mental health, “interdisciplinary specialists have been able to meet the nuanced needs of patients better than solo practitioners, reaping boundless rewards as a result.”²³ They further state that “in the realm of matrimonial law these successes will help families to be better served and professional satisfaction will increase.”²⁴

The push for more interdisciplinary approaches to address the needs and protect the rights of people going through family reorganization parallels the framework of the continuum of dispute resolution. As we move along, the alternative dispute resolution continuum from litigation to collaborative law to mediation, there is also a movement in practice approaches from the sole legal-wellness provider to collaborative teams. Research has suggested that in those cases in which alternative dispute resolution is appropriate and, subsequently, interdisciplinary teams are engaged, global family functioning is improved.²⁵

The movement toward more collaborative interdisciplinary functioning cannot be based merely upon resolve. Mosten and Traum suggest that changes need to occur in the training of new lawyers²⁶ and, in my view, other professionals who will become collaborative partners with new matrimonial attorneys. They further suggest that pilot programs need to be developed and tested to assess the best means and models for interdisciplinary collaboration for family reorganizations.²⁷ But additional changes need to occur to be able to fully realize this zeitgeist change. This includes examining the canons of ethics for all of the professions, along with relevant statutes, to determine the impediments to practice that promotes the best outcome for families. Issues ranging from identifying a family globally as a client to practicing collaboratively across professions to issues of differences in legal mandates, such as mandated reporting for child abuse and neglect, need to be addressed before true interdisciplinary functioning can be achieved.

Mosten and Traum present more than a model of effective practice of matrimonial law. Their article represents the foundation of a fundamental shift in the handling of family reorganization paralleling other cultural and scientific changes that occurred over the past twenty-five years. This includes a movement toward promoting wellness in people in crisis, using all available resources to facilitate the best outcomes and elevating the primacy of family functioning in the well-being of the family members, especially the children. While there are many structural, ethical, cultural, and historical impediments to moving in this direction, Mosten and Traum illuminate that these changes have already occurred in many other facets of society, including business, mental health, and medicine.²⁸ Fifty-seven years ago, Talcott Parson suggested that cultural changes in social systems, while slow to start, are difficult to resist once they gained momentum.²⁹ Mosten and Traum have given us a pathway to methodically facilitate these changes for the betterment of reorganizing families in a controlled manner.

NOTES

1. An earlier version of this comment was delivered at the Siben & Siben conference on Interdisciplinary Collaboration in Family Law: The Real and the Ideal held at the Maurice A. Deane School of Law at Hofstra University on November 10, 2017.
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3. Forrest S. Mosten & Lara Traum, *Interdisciplinary Teamwork in Family Law Practice*, 56 *FAM. CT. REV.* 56 (3) (2018).
4. *Id.*
5. *Id.*
6. *Id.*
7. J. Herbie DiFonzo, *From the Rule of One to Shared Parenting: Custody Presumptions in Law and Policy*, 52 *FAM. CT. REV.* 213 (2014).
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9. *Id.*
10. Mosten & Traum, *supra* note 3.
11. *Id.*
12. Joan B. Kelly & Judith S. Wallerstein, *The Effects of Parental Divorce: Experiences of the Child in Early Latency*, 46 *AM. J. ORTHOPSYCHIATRY* 20 (1976); Judith S. Wallerstein & Joan B. Kelly, *The Effects of Parental Divorce: Experiences of the Preschool Child*, 14 *J. AM. ACAD. CHILD PSYCHIATRY* 600 (1975).
13. Paul R. Amato, *Children of Divorce in the 1990s: An Update of the Amato and Keith (1991) meta-analysis*, 15 *J. FAM. PSYCHOL.* 355 (2001).
14. Paul R. Amato & Bruce Keith, *Parental Divorce and the Well-Being of Children: A Meta-Analysis*, 110 *PSYCHOL. BULLETIN* 26 (1991).
15. Amato, *supra* note 14; Amato & Keith, *supra* note 13.
16. Emory L. Cowen, *In Pursuit of Wellness*, 46 *AM. PSYCHOL.* 404 (1991).
17. *Id.*
18. Mosten & Traum, *supra* note 3.
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. Alyssa MANTE, *THE IMPACT OF DIVORCE RESOLUTION PROCEDURES, ON INTER-PARENTAL CONFLICT AND POSITIONAL POWER* (2015); ANNA VARFOLOMEYEVA, *DISPUTE RESOLUTION AND CO-PARENTING QUALITY: THE ROLE OF FORGIVENESS, AGREEMENT SATISFACTION, AND CONFLICT* (2015).
26. Mosten & Traum, *supra* note 3.
27. *Id.*
28. *Id.*
29. TALCOTT PARSON, *THE SOCIAL SYSTEM* (1951).

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INTERDISCIPLINARY PRACTICE IN FAMILY COURT: A JUDICIAL PERSPECTIVE¹

Hon. Jane Pearl

This commentary emphasizes the windows of judicial opportunity to proactively manage family law cases, to empower families, and to encourage interdisciplinary conferencing and settlement.

Key Points for the Family Court Community:

- At the beginning of each case, judges are able to set a vital tone of deep respect for every person in the courtroom.
- Interdisciplinary case conferencing in custody and parental access cases will enhance a holistic emphasis on identifying intersecting family strengths and challenges.

Keywords: Custody; Family Law; Interdisciplinary Conferencing; Judges; Juvenile Delinquency; and Parental Access.

It is a poignant joy to be part of this issue's commentary, which arose from a November 10, 2017, program that was dedicated to the momentous memory of Professor Herbie DiFonzo.

Professor Mosten heralds an inspirational, nonturgid glimpse into interdisciplinary matrimonial practice that may enhance timely triage and informed parental consent in the service of reaching resolutions that will enhance family strengths and cushion family vulnerabilities. Having previously taught in medical school and having assisted in research in preventive medicine and public health, at the risk of sounding sanguine, I note that many of Professor Mosten's highlighted teamwork principles in medical and mental health care remain as aspirations to date, to wit, an ongoing dialectic between the ideal and the real.

I presently hail from Family Court in New York City, where we must take every interdisciplinary lesson learned (and lessons being learned) from child protection, adoption, juvenile justice, family violence, and so on, and segue such pearls of hope into a better resolution of child custody and parental access disputes and the financial empowerment of families, postdissolution.

Notwithstanding my vantage of family court as constituting a legal emergency room, it is not oxymoronic to contemplate court-based encouragement of interdisciplinary triage and informed settlement. Analogous to an opportunity for a judge to refer a court-filed juvenile delinquency case back to probation for adjustment, a judge may refer parents to mediation to consider if that will provide a pathway for informed consent. There are many judicial opportunities to proactively manage family law disputes and assuage family tempests. I have the privilege to hear a variety of family law matters, including complex custody and parental access cases, child neglect and abuse cases, adoption cases, and juvenile delinquency cases (where youth under the age of sixteen are charged with acts that would be criminal if they were over the age of sixteen—in October 2018, the age of adult criminal responsibility will be raised to seventeen, and in October 2019, the age will be raised to eighteen).

At the very beginning of each case, judges are able to set a vital tone of deep respect for every person in the courtroom, regardless of the nature of the dispute. We have open courtrooms in New York so that extended family and friends come to court, as often do children in child neglect and abuse cases. My custody and parental access cases are influenced by my child protective cases because I have experienced countless times the angst felt by parents or other caregivers when the state intervenes to protect children and, in doing so, infringes upon parents' rights and children's wishes.

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Therefore, I think that it behooves judges to learn from parents, early on in a given case, what issues truly are in dispute and what ostensible issues may be resolvable, with judicial massaging of parental temperaments and concerns. In counsel's presence, it sometimes works wonders to tell parents how much more they know about their child or children than I do and that if they are able to work out their differences, to allow their love and commitment to their child(ren) to take up more space than the anger, shame, guilt, letdown, and loss experienced in the disintegration of their relationship with each other, their children will flourish beyond the parents' loftiest dreams and expectations. However, on the other hand, parents will suffer intrusive onslaught and their child(ren) will suffer irrevocable emotional and financial harm if their family law case is subjected to protracted litigation.

Interdisciplinary case conferencing in custody and parental access cases will enhance a holistic emphasis on identifying intersecting family strengths and challenges. As a preliminary matter, in New York, parents and children are entitled to court-appointed counsel at no cost, if financially eligible. Such parent and child representation crucially may be enhanced by interdisciplinary teamwork contributions of psychologists, social workers, and family advocates. For several years I benefited from working on a pilot project with a social worker that inexorably enhanced my interdisciplinary expertise and focus.

If initial conferencing indicates the absence of an early settlement window, it is helpful to refer parents for parent education and support at the same time that their family dispute is analyzed and triaged for its complexity. It is helpful to remember that courts often reel from legal crises that neither developed in a vacuum nor evolved overnight. In cases where one parent asserts about the parent a failure to provide financial support, inadequate shelter, an absence of childcare arrangements, and/or a lack of parental involvement to date, such claims may be addressed vis-à-vis a court-ordered, government-financed, investigation by probation services, followed by renewed interdisciplinary case support and conferencing and, then, if settlement again fails, by streamlined plenary trial testimony.

In certain custody and parental access cases, timely and cost-effective targeted mental health evaluations clinically may be indicated to rule out discrete parental allegations, for example, substance use disorder or special needs on the part of a parent and/or one or more subject children. In New York, Kings, Bronx, and Queens Counties, our court-based Mental Health Services can conduct such government-financed targeted evaluations, followed, again, by interdisciplinary case support and settlement conferencing. (Targeted mental health evaluations differ from Professor Mosten's reference to mini-confidential custody evaluations in his 2011 *Family Law Quarterly* article²).

Distinguishable from a targeted mental health evaluation, a competent comprehensive forensic evaluation encompasses the interviewing (and testing, where indicated) of both parents (and nonparents where extraordinary circumstances are proffered—a prerequisite standing requirement in New York to consider best interests for a child to be in the care of a nonparent); clinical and/or collateral interviewing of the subject child(ren) (based upon age, developmental capacity, and presenting forensic issues); parent-child observations with both parents (and nonparents where warranted); and corroborating collateral data and analysis.

Of vital importance in the context of today's interdisciplinary symposium is the mention that a competent, nonbiased forensic evaluation offers a strong potential to facilitate an informed agreement about custodial decision making, parental access and/or a parenting plan, and child and spousal support.

The court's responsibility when a forensic evaluation does not facilitate a safe and appropriate settlement is to conduct a hearing as expeditiously and continuously as possible so as to minimize the adage of "Justice delayed is justice denied." The forensic evaluation, when properly admitted into evidence at trial, may inform a judge's determination regarding complementary parental strengths and vulnerabilities impacting joint decisionmaking versus zones of parental responsibility versus sole custody.

In closing, in tribute to Professor Forrest (Woody) Mosten's charge, I would relish replacing my voluminous judicial docket with interdisciplinary therapeutic jurisprudence.

NOTES

1. An earlier version of this comment was delivered at the Siben & Siben conference on Interdisciplinary Collaboration in Family Law: The Real and the Ideal held at the Maurice A. Deane School of Law at Hofstra University on November 10, 2017.

2. Forrest S. Mosten, *Confidential Mini Child-Custody Evaluations: Another ADR Option*, 46 FAM. L.Q. 119 (2011).

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THE INTERDISCIPLINARY TEAM APPROACH TO RESOLVING FAMILY DISPUTES¹

Lawrence Jay Braunstein

Forrest Mosten and Lara Traum's article, "Interdisciplinary Teamwork in Family Law Practice,"² embodies what all family law attorneys should aspire to: to have the ability to zealously represent their client, manage their client's emotions and expectations, and help the family restructure into a new unit, while always focusing on the best interests of the children. One of the focuses of the family law attorney should be the health (present and future) of the family. This is no easy task and requires the intervention and assistance of other well-trained professionals.

Emotion and expectation are not legal terms, yet, as opposed to other areas of legal practice, they are ever present in the hearts and minds of litigants in almost every family law case. Although family law attorneys are well trained, there is often a disconnect in the belief of many family law attorneys that they alone can effectively manage the conflict that each family invariably faces and that the use of mental health professionals is somehow a sign of weakness.

The growing use of mental health professionals as team members in the resolution of litigated family law disputes is a paradigm shift in the practice of family law, as is the rise in the utilization of the principles of collaborative law. In their article, Mosten and Traum have commented that attorneys "are generally accustomed to having ultimate control, shaping disputes and client narratives to fit the needs of the litigation rather than shaping process options to fit the needs of the client."³

Our courts are overburdened and often lack the time and resources to adequately resolve the matters brought before them. In a litigated matter the court usually offers two possible solutions; settle the case (with varying degrees of assistance from the court or the direction to go out in the hallway to settle the matter) or have a trial. The recognition that there are other process options other than litigation or to be utilized during the litigation that might be more appropriate to resolve a given matter recognizes that every family is unique.

Mosten and Traum state that "[f]amilies 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."⁴ They discuss the concept of "interdisciplinary triage" and suggest that, although it is rare, the court appoint "an interdisciplinary team and charge its members to work together" to craft a resolution.⁵ The utilization of this approach, as early as possible in the litigation, will set the tone and guide the litigation toward a more effective, family-focused resolution for that particular family.

Mosten and Traum (2018) have observed that "parties to litigation do not fully dictate the eventual outcome of their case."⁶ In supporting the use of an interdisciplinary team, they suggest that "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."⁷ This, in turn, will empower and assist the parties in crafting a resolution specific to their needs and interests.

I submit that to be effective, a family law attorney should be trained to consider not only their client's emotional and holistic needs but also those of the other party to the litigation. The breakup of a family is an emotional process. As the late Professor J. Herbie DiFonso has said, "Transitions are learning experiences—they aren't supposed to be easy."

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Mosten and Traum observed that “the nature of family conflict resolution often requires multi-party and multiprofessional involvement.”⁸ They have given those of us who have dedicated our careers to dealing with families in crisis, judges, mental health professionals, and attorneys, a blueprint for a more effective, interdisciplinary team approach, utilizing our individual professional strengths, to resolving family conflict.

NOTES

1. An earlier version of this comment was delivered at the Siben & Siben conference on Interdisciplinary Collaboration in Family Law: The Real and the Ideal held at the Maurice A. Deane School of Law at Hofstra University on November 10, 2017.

2. Forrest S. Mosten & Lara Traum, *Interdisciplinary Teamwork in Family Law Practice*, 56 FAM CT. REV. ??? (2018).

3. *Id.* at 17.

4. *Id.* at 18.

5. *Id.*

6. *Id.*

7. *Id.* at 19.

8. *Id.* at 17.

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COMMENTARY ON INTERDISCIPLINARY TEAMWORK IN FAMILY LAW PRACTICE

Nancy Retsinas and Kathleen Zumpano

This commentary discusses and expands upon Mosten and Traumm's extraordinary work on interdisciplinary teams. Focusing on the continuum between independence and interdependence in team formation, we explore the benefits of team members' shared responsibility and highlight potential challenges. We emphasize that regardless of where a team may fall on the continuum, establishing and adhering to a strong structure results in increased practitioner satisfaction and better client outcomes. This commentary identifies five best practices that promote highly functioning teams and urges family law practitioners to seek more advanced interdisciplinary team training opportunities.

Key Points for the Family Court Community:

- The relationship between team functioning and individual practitioners is important to professional satisfaction and client outcomes.
- On the continuum of independence and interdependence, personal knowledge of where an individual member falls on this continuum is paramount to successful teamwork.
- Shared responsibility among team members provides many benefits and some challenges.
- We highlight the need for strong team structure and provide action items for effective teamwork.

Keywords: Case Management; Co-Mediation; Collaborative Divorce; Informed Consent; Intake Process; Mediation; Teams; and Training.

This is an exciting time in the field of dispute resolution. Collaborative problem solving is evolving rapidly, and practitioners more and more are exploring dynamic dispute resolution models across multiple disciplines that carry with them the promise of better client outcomes, higher professional satisfaction, and the opportunity to flourish in a family law practice that aligns with the practitioner's personal values.

Mosten and Traum¹ have made significant contributions to the field in their research on team formation and function and how various models in business and health care can be successfully adapted to family law. Their research clarifies the conversation about how the way a team functions can foretell the successes and challenges practitioners face in the life cycle of a family law matter.

As collaborative practitioners and trainers from different disciplines who work with each other in a variety of team models, we spend a lot of time thinking about how teams function best and refining our teamwork models. For us, it begins and ends with the interplay between "independent teams" and "interdependent teams." Both have benefits to a well-functioning team as a whole, but only truly interdependent teams *require* shared responsibility from all members of the team. Additionally, only teams operating under this premise can fully experience the potential that working with others as co-equals in a healthy, well-functioning team can offer.

We experience many benefits of shared responsibility. For one, it stretches our default thought process that comes from a particular professional's educational background. Further, it calls us to explore different approaches to defining the presenting problem and exploring solutions to that problem. Finally, it fundamentally changes the way we look at all our cases because we now know how important a cross-disciplinary approach is to problem solving. These benefits move us closer

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to embracing the shift to true interdependence—the shared responsibility model prized in Mosten and Traum’s work.

But with benefits come challenges. These challenges often push practitioners toward models that isolate professionals and encourage competition between the professions. One such challenge is that at times professionals are aligned with one or another client. This arises due to the representational nature of the collaborative law process (where each party has their own lawyer and may also have their own mental health practitioner). For one, unlike in the medical or business model where it is likely all team members have one common end goal in mind, in the legal field collaborative teams are working with overlapping and divergent client goals. Professionals working on a team without an interdependent team structure in place to provide a richer context to those goals may retreat into their traditional modes of operating unilaterally to control process and outcome or to protect their client. The result is isolation from team members, dissatisfaction with the team process, and poor client outcomes.

In particular, we have seen the attorney-dominated referral-based model as most prevalent in our communities, as it is the simplest way to formulate a team. This highlights the basic philosophy of separation between the professions—with the attorneys in charge of delegating tasks and creating and directing a team as they see fit. Collaborative professionals without a strong understanding of how to work in teams increase the risk of breakdowns in trust, positioning, turf battles, role confusion, and more. These challenges undermine the clients’ opportunity to exercise autonomy and choice within the problem-solving process and threaten the client’s ability to achieve the durable out-of-court settlement they seek.

Along the road of creating, training, and cultivating teams, we have come to realize that demanding a strong teamwork structure in every case is key to successful client outcomes. We know that once professionals have experienced a well-functioning team, they want to find ways to create this for all their cases. We have given a lot of thought to how to structure our teamwork to maximize the benefits and build in protocols that enhance opportunities for creative problem solving while meeting the challenges teams can bring up head on. Below are five concepts we believe establish the base structure for a well-functioning team, regardless of where it falls along the continuum between independence and interdependence:

1. BE INTENTIONAL ABOUT TEAM FORMATION

Multidisciplinary? Interdisciplinary? Transdisciplinary? What is important is to know which model the professionals are using and specifically what protocols within a particular model your individual team will adhere to. Nothing can be assumed. This should be communicated not only among professionals but also to the clients. Further, practitioners need to recognize where they fall along the independence–interdependence continuum and be very clear about their comfort level and expectations during team formation. It is less important whether a particular team divides responsibilities akin to a conjoint mediation or collaborative mediation, for instance. What is key is to make sure the team’s functional model is fully developed at the initiation of the case (and adhered to throughout the case).

2. DEVELOP A COMMON INTAKE PROCESS

We have spent considerable time developing a congruent intake process to increase efficiency and help the client experience a seamless intake process. In addition, we have developed similar engagement letters and processes that also meet each of our profession’s ethical obligations. We have seen that one of the challenges of working in a collaborative team is how to manage the initial client experience with each of us. Clients often report how exhausting it is to retell their story multiple times, complete similar intakes in each office, and worry about whether their important

information is being accurately conveyed to other members of the team. Developing a common intake process across all team members addresses this challenge.

3. DEVELOP A STRUCTURE TO AID CASE MANAGEMENT AND CLEAR COMMUNICATION

Protocols, checklists, note taking, team check-ins, and debriefs—all are key tools in any team process but often overlooked and underutilized. Protocols such as team formation or communication between team members often differ not just by geography but also based on original training exposure. In every case, we build in professional briefing time immediately before and immediately after every session, whether mediation or collaborative practice. This not only addresses the challenges of coordination of services among team members to maximize understanding, but it also sets a problem-solving tone and minimizes the inherent risk of client and/or professional positioning.

4. RESPECT THE PROCESS; RESPECT THE PEOPLE

Turn your cell phones off. Calendar sufficient time to attend all meetings, including pre- and postsession briefings. Listen intently. Stay flexible and nimble to respond to client process needs. Effective teamwork, particularly interdependent, transdisciplinary teamwork, demands not only a different skill set but also a different mindset. In traditional legal practice, lawyers multitask and double-book themselves, unilaterally cut meetings short, take breaks in the middle of meetings to take a call or send an e-mail. These actions damage team functioning, sometimes irreparably.

5. MAINTAIN A COMMITMENT TO KAIZEN

Rapport building, resource sharing—Kaizen is continuous learning (and for some, teaching). To do this work well, a practitioner must not just interact with like-minded professionals in practice groups and associations (which might focus disproportionately on networking and case generation). A practitioner must also immerse him/herself in the field, share information and resources across disciplines, and take multiple collaborative and teamwork-oriented trainings. Having a commitment to ongoing development for improved case results exemplifies the spirit of Kaizen.

As practitioners, we know how fundamental these concepts are to team development and function. As trainers, we know that a single 12–14-hour basic training in collaborative law cannot sufficiently prepare professionals to work effectively in vibrant, dynamic teams. While basic collaborative training provides education in role definition and utilization within a multidisciplinary team, it does not allow for the deeper explorations necessary to be most effective in higher-level interdisciplinary or transdisciplinary teams.

In conclusion, Mosten and Traum have provided much food for thought to both practitioners and trainers alike in the family law community. While we can and should learn from what other fields already know about teamwork, it cannot be overstated that the heavy emotional dynamics at play in family matters are uniquely adept at seeping into team formation and structure. To do this work well, family law professionals must broaden their training to ensure a robust understanding of interpersonal dynamics in addition to the teamwork concepts shared in the article. Finally, we wholeheartedly agree with the authors that practitioners must recognize the need for continuous training related to team function and formation, trust building and self-exploration not only *across* disciplines but where attendees from different fields are experiencing and learning *together*. This deeper training will create better teams and better client outcomes and will strengthen bonds between professionals.

NOTE

1. Forrest S. Mosten & Lara Traum, *Interdisciplinary Teamwork in Family Law Practice*, 56 F_{AM CT. REV.} ??? (2018).

Nancy Retsinas is a collaborative lawyer and mediator in Washington and Oregon, in private practice since 1991. She maintained a traditional family law practice until January 1, 2015, when she stopped accepting litigation matters. She has been training professionals in client-centered dispute resolution methods (family law ethics, collaborative law and mediation, unbundling, lawyer as peacemaker) since 2008. She is currently on the board of Collaborative Professionals of Washington (board treasurer). She is a contributing author to Washington Practice Manual—Family Law, a West publication (2016). She coauthored a chapter on use of behavioral health specialists in family law in Mosten and Cordover's upcoming book, Building a Successful Collaborative Law Practice (2018). She is also a member of Peacemaking Practice Trainers, a collective of cross-disciplinary trainers across North America.

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Both authors have formed a co-mediation team, preferring to work with parties in the conjoint mediation team setting. They often work together as members of a collaborative divorce team. In 2015, they co-founded Two Rivers Institute for Dispute Resolution with two themes in mind: first, to deliver quality Collaborative practice and team-building training for professionals in their region and, second, to develop and cultivate a learning community of like-minded professionals, across disciplines, who learn consensual dispute resolution methods together.

