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Collaborative law practice requires training, but empowers participants

Many attorneys ask whether any attorney can practice collaborative law. Is collaborative practice training necessary? Collaborative practice requires a completely different skill set than how attorneys traditionally negotiate, therefore, it is absolutely critical to have the proper training in the true collaborative model.

The collaborative team can consist of attorneys, financial neutrals and mental health professionals, such as coaches and child specialists. Each one of these professionals must complete collaborative practice training. They then become collaborative law fellows and members of the International Academy of Collaborative Professionals and the Collaborative Law Institute of Illinois. A collaborative law fellow's objective is to facilitate a healthy resolution through cooperation that will help restructure a positive family relationship.

Collaborative practice demands special skills in guiding negotiations and managing conflict. The attorney is trained to set aside traditional positional bargaining and instead engage in a needs-based negotiation.

Clients often learn that they have common goals and concerns when they use a needs-based negotiation. They often find they can reach a consensus efficiently with properly trained professionals guiding them.

These are not skills lawyers typically learn in law school. As such, a collaborative law fellow might be doing a client a disservice by signing a collaborative law participation agreement with an attorney who did not complete the proper training. Some attorneys go so far as colluding with their clients to misuse the collaborative law process to delay or gain an unfair edge in negotiations.

That is not to say you cannot work cooperatively with an attorney, but it is not advised to sign this formal agreement with anyone who is not trained in collaborative practice. The participation agreement is at the heart of

collaborative practice and sets out the ground rules for the negotiation.

After completing the training, an attorney gains the benefit of offering their clients a range of options on how to divorce their spouse. It allows family law firms to become full service and tailor their service to each individual. As a client interviews the attorney, the attorney can also assess the client's appropriateness for litigation, mediation or collaboration.

In a divorce case, the majority of the intake with new clients should be spent in getting to know the clients on a deeper psychological level and learning personal details, such as their family of origin, the nature of the marital relationship, how the couple fought and what they fought about. It often becomes obvious to the client and attorney which option is most appropriate and in the best interest of the family.

In litigation, the outcome of the case is often dictated by the judge. With mediation, the spouses work together with an independent third party, however, one party sometimes feels unprotected or unheard.

For those clients who feel they need an attorney present with them but would like to manage their outcome via a mediation approach, they would be appropriate for a collaborative divorce. Those clients will have the benefit of a holistic team approach, ensuring their legal, financial and emotional interests are all protected. It is beneficial for clients who are open to honest communication and want to determine the outcome of their divorce.

As collaborative practice method is growing, it is branching out into other areas of the legal profession. Lindsey Paige Markus, an estate planning attorney with Chuhak & Tecson P.C., said, "Prior to the training, my negotiations focused on the communication between two attorneys representing disparate interests, working together to reach acceptable terms for our respective clients. The communication was often 'back and forth.' My negotiating style today engages opposing counsel in

COLLABORATIVE CONCEPTS



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a real conversation of the issues, and then together, we present the framework to the clients to build consensus."

For Markus, mediation and collaborative training transformed her style of communication.

"As attorneys, we are trained to provide solutions to issues," she said. "Rather than provide a suggested solution immediately, the collaborative training taught me how to work with clients to guide them through the exploration of options and create their own resolution.

"Closed-ended questions guide the clients through my perception of the solution, but open-ended questions allow for the clients to share more information and discover the solution that meets their particular needs. I have incorporated this style into my everyday practice with clients, co-counsel

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and colleagues. It is amazing how the process of creating the resolution really empowers the participants.”

Psychotherapist and divorce coach Melissa Mondschain, who attended the training in September, became even more committed to implementing a higher level of communication in her practice.

During the training, it became evident to Mondschain that transparency between the parties was key and it clearly set guidelines to determine if collaborative law worked best for certain cases. They taught screening and intake processes, discussed the participation agreement, showed how to build a collaborative team and practice and explained the benefits and obstacles for this model. The attendees broke out into small groups to work through case studies and scenarios were introduced to encourage role-playing.

Lectures by many in collaborative practice added to the commitment of the community. Mondschain was impressed by the expertise and support offered by these professionals.

"The training is important because it levels the playing field," she said. "It creates a baseline in understanding the process, speaking the language and utilizing industry standards. It was beneficial to connect with people who have the same philosophy and are committed to changing the divorce process. Collaborative law brings a less adversarial and more creative way to dissolve marriages."

To become a collaborative law fellow, an attorney must complete 12 hours in collaborative training and at least one 30-hour training in client-centered, facilitative conflict resolution.

They are also required to accumulate 15 hours of training in interest-based negotiation, communication skills, additional collaborative training, advanced mediation or basic professional coaching. The requirements are similar for financial and mental health professionals. More information can be found at collaborativepractice.com.