

# THE Collaborative Review

The Journal of the International  
Academy of Collaborative Professionals

IACP INTERNATIONAL ACADEMY OF  
COLLABORATIVE PROFESSIONALS

## Access To Collaboration

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# *Editors' Note*

*By The 2013 Access to Collaboration Task Force*

**T**his edition of the *Collaborative Review* is devoted to Access to Collaboration. The IACP 2011 Strategic Plan included the goal to “support and promote delivery of Collaborative Practice services to low income/modest means clientele.” The Access to Collaboration Task Force was appointed at the end of 2012 in furtherance of this goal. The Task Force initially spread a wide net to identify existing Access to Collaboration Programs. We posted requests to contact us on listservs and in the Collaborative Connection e-newsletter. We contacted Collaborative Practice Groups in different regions to find out if they had or knew of another group that had an Access to Collaboration program.

We were able to identify 13 programs and gathered information about their protocols and procedures, their challenges, what worked well, and other information to understand their programs. As we reviewed this wealth of information, we began discussing the common and differing factors we saw in the programs, which eventually morphed into the document at page 25 of this Review entitled “Considerations in Designing an Access to Collaboration Program.” Initially we believed we might be able to develop a model program through gathering this information. We soon realized that there are not one or two programs that should be held out as “model” programs, but rather that each program should be designed to fit the circumstances and resources of the community in which it is operating.

Included in this edition of the Review are:

- “Using the Collaborative Process to Address Access to Justice” explores whether Access to Collaboration programs through Legal Services Corporation could serve clients whose needs are not currently being met.
- Four articles describe existing programs in more detail to demonstrate the range of possibilities for Access to Collaboration Programs – “Using the Collaborative Process to Address Access to Justice”, “Is It Possible to Serve Clients Through a Time Limited *Pro Bono* Program”, “An Organic Approach to *Pro Bono* and Low Cost Collaborative Cases” and “Collaborative Conferencing Clinic: Building the Future of Collaborative Practice While Providing Access to Collaboration”.
- “Is There a Place for a *Pro Bono* Collaborative Practice Clinic in Australian Family Law?” shows the process of starting to look at how an Access to Collaboration program could be adapted for local culture and conditions.
- “Creative Approaches to Providing Collaborative Services to People of Modest Means” reviews the types of Access to Collaboration programs which have been developed.
- “What’s In It For Us? How *Pro Bono* and Low *Bono* Collaborative Programs Benefit Collaborative Professionals” focuses on the benefits of Access to Collaboration programs for Collaborative practitioners, Collaborative groups, and our communities.
- “Considerations in Designing an Access to Collaboration Program” describes the questions to consider when a Collaborative group or community is exploring how to develop an Access to Collaboration program. It is intended to spark ideas and discussion as a program is being created or can be used in the periodic review of existing programs.

Our hope is that this Review will be the inspiration for Collaborative practitioners and Practice Groups to consider developing Access to Collaboration programs in our communities. Forms and procedures used by existing programs that may be helpful to those setting up new programs can be viewed and downloaded from the Resource Library in the Members' Section of the IACP website. We offer information on the variety of programs available so that it is easier to create a program that makes sense in your own community. The possibilities are limited only by your creativity.

Please contact the Task Force when you develop a program in your community. We want to continue to spread information about new programs and ideas for Access to Collaboration.

This Edition was a collaborative effort by the Access to Collaboration Task Force, whose members wrote and peer edited the articles. As chair of the Task Force and on behalf of IACP as Past President, many thanks to this hard working Task Force, which created and disseminated an impressive body of work on Access to Collaboration in just one year.

*Catherine Conner,*

*On behalf of the Editors - the 2013 Access to Collaboration Task Force:*

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## *Message from the Executive Director*

*Talia L. Katz, JD*

The passion and commitment of the members of the Access to Collaboration Task Force will be obvious to you as you read the articles in this edition. We are so grateful for the leadership they have brought to this immensely important initiative. Not only has background information been collected and shared, the Task Force has synthesized all that it learned, providing us with thoughtful guidance, models, templates, forms and an abundance of inspiration.

Typically, the *Collaborative Review* is distributed only to IACP members. We are making an exception with regard to this edition. We believe so strongly in the importance of *pro bono* Collaborative programs that we are locating this resource in the publicly accessible Professionals section of the IACP website. We encourage you to share the electronic link freely; with your Practice Groups, with potential community partners and all who are able to join with us in making meaningful and respectful conflict resolution an accessible process option throughout the world.

*Talia Katz*

I

# *Using the Collaborative Process to Address Access to Justice*

*By Paula Hopkins, JD*

Freshly inspired by the 14th Annual IACP Forum, I recently attended the Legal Services Corporation Annual Meeting in Pittsburgh, Pennsylvania on October 21, 2013. In the United States, Legal Services Corporation, which is funded by an annual appropriation by Congress as part of the federal budget, is the primary mechanism for delivery of services to the poor through grants of funds to programs in all fifty states. Panel discussions of judges, attorneys and program providers were held throughout the morning at the annual meeting to discuss how to address some of the barriers to providing legal representation for individuals eligible for free legal services. Not once was the Collaborative process mentioned in these discussions although it seemed that the Collaborative process might provide at least some of the answers to the problems described. Here are some of the issues that were discussed and the way in which the Collaborative process might address those issues.

## ***Approximately one-fifth of the population of the United States meets the eligibility criteria for free legal services.***

In 2012, 61.8 million of the approximately 314 million people in the United States met the eligibility criteria for free legal services. While not all of those people had legal needs, the Legal Services Corporation (LSC) served less than two million households in 2012.<sup>1</sup> Even more individuals and families have incomes that exceed the guidelines for legal services from a LSC program<sup>2</sup> but cannot afford to hire an attorney.

The problem is particularly acute in the area of family law. Although family law cases represent approximately one-third of the cases closed by LSC each year<sup>3</sup>, these cases represent only a fraction of the number of *pro bono* and low *bono*<sup>4</sup> clients who need representation in family law. Any attorney still litigating is aware that the courts are burdened by the increasing number of *pro se* litigants, particularly in family law.<sup>5</sup>

What does a family who qualifies for legal services look like? Consider John Smith and Jane Smith, who have been married for 20 years, but whose marriage is currently not

a happy one. John Smith worked construction for many years but since the economy tanked he has not been able to find construction work. Instead, he is working at a “big box” home remodeling store making \$11 an hour and earns approximately \$22,000 a year with some benefits. Jane Smith was a homemaker for most of their married life. In the last few years, Jane has been disabled by multiple sclerosis and she feels that the stress of the marriage and the parties’ financial problems worsen her condition. Although she does not believe that she can work, she has been unable to qualify for Supplemental Security Income. The parties have two children, ages 9 and 11, who are living with them. The Smiths purchased a home 15 years ago when John was working construction steadily but they have recently borrowed against all of the remaining equity to pay off credit card debt. They are income eligible for a *pro bono* no-fault divorce through the local bar association but the program does not handle property division or spousal support issues.

Through the work of the IACP Task Force on Access to Collaboration, we have discovered that many of the Practice Groups around the world are interested in developing programs to help *pro bono* clients, such as the Smith family, resolve their family law conflicts using the Collaborative process. Based upon the discussions at the LSC Annual Meeting, it is reasonable to conclude that Collaborative professionals are an underutilized resource for delivery of *pro bono* representation through the Collaborative process, especially in family law cases.

## ***The civil law court system in the United States is too complex to be navigated by pro se litigants.***

Litigation through the court system is still the process of choice for most individuals seeking resolution to their civil law conflicts and family law is no exception. Our current civil legal system in the United States is built on a combination of state and federal statutes, common law, case law and rules of court procedure, evidence and ethics.

Litigating a civil law case is a multi-layered process that requires knowledge of these rules and laws.

Even with a legal education and years of experience, attorneys find the court process to be complicated. If the system is difficult for those trained to use it, how can we expect the unrepresented to access it in any meaningful way?

***Litigated cases are so complicated and take so much time that providing attorney representation for every litigated case is not feasible.***

If the court system is too complicated for *pro se* litigants, is it possible to provide enough attorneys to represent *pro bono* clients in their civil law cases? The answer is no—at least not with the current level of funding.

LSC funded programs meet the legal services needs of eligible clients primarily by two vehicles. First, local programs have staff attorneys who provide direct representation of income eligible clients in certain identified areas, such as landlord tenant cases. While LSC funded programs have never successfully represented 100% of the eligible clients, recent budget cuts combined with the economic downturn have resulted in an all time low in the number of eligible clients served.

Second, LSC programs are required to use a portion of their funds for community partnerships. These partnerships are designed to recruit and train private attorneys to represent *pro bono* clients in litigation. Although these programs are successful, the number of *pro bono* clients represented by private counsel is even less than the number of *pro bono* clients represented directly by staff attorneys through local LSC funded programs.

Although the number of eligible clients is increasing, the Congressional appropriation for LSC is decreasing, falling to an all-time low in 2012.<sup>6</sup> Programs funded by LSC have had to explore creative ways to create additional funding through partnerships with state and local governments and community groups. LSC funded programs cannot meet the needs of all eligible clients and access to justice in the civil system has reached crisis levels.<sup>7</sup>

***The Collaborative process has advantages over litigation in resolving conflicts for pro bono clients.***

Collaborative process requires the use of trained Collaborative professionals but it has more flexibility than

litigation for meeting the needs of the participants. Through the Collaborative process, unrepresented parties can resolve their conflict without the complexity of the court system. Collaborative professionals use their skills to resolve conflict through negotiation not litigation. Although the laws of a jurisdiction may provide one or more options for settlement, creative alternatives to the law are also explored. Complicated pleadings or court filings are rarely required because the conflict is resolved usually by the entry of a written agreement outside of the litigation process.

LSC has been working on developing innovative technologies to help courts serve unrepresented litigants.<sup>8</sup> Maryland is in the process of implementing a wide ranging electronic case filing and management system that will provide easier access for unrepresented parties to the court system.<sup>9</sup> While these programs are laudable for their attempt to address access to the civil courts, they require taxpayer funding that may not be available in all states and local jurisdictions.

The programs described in this issue of the *Collaborative Review* illustrate the versatility of the Collaborative process to meet the conflict resolution needs of low income clients. Programs can be streamlined and provided within a set time frame as occurs with the Dispute Resolution Day of the Collaborative Council of the Redwood Empire. The Collaborative Project of Maryland is a program with more flexible time limits that may provide not only Collaboratively trained attorneys but also Collaborative coaches, neutral financial professionals and child specialists. An advantage of the Collaborative process is that tailoring the process to the needs of a local community does not require judicial oversight or changes to the court system, because the process takes place separate from the courts.

***The Collaborative process offers the opportunity for sustainable solutions that will benefit the participants even after the presenting conflict is resolved.***

Not only can the Collaborative process provide the structure for resolving disputes in the short term, but Collaborative professionals can help an individual address issues that may minimize the repetition of similar or related disputes in the future. Many low income families have financial, housing, mental health, addiction and other problems that can make their civil law conflicts, such as divorce and custody related issues, difficult to resolve on a long term basis. Getting the parties only a divorce or a

single custody order may not be enough. Helping them to address the underlying financial issues may be more successful in avoiding future conflicts.

Consider, again, the Smith family. If Jane and John can find a way to separate and move toward divorce, perhaps Jane's health condition will stabilize, as she believes, and she will be able to find work. A vocational counselor could help both Jane and John find the best employment available to maximize their income. Affording the cost of living in two households will be difficult, but a neutral, financial professional may be able to help them look for untapped resources, evaluate whether to sell their house, and build a workable budget for each of them.

The family law conflict of many unrepresented individuals may be exacerbated by the lack of financial resources that makes it impossible to retain counsel. Whether the lack of sufficient income results from chronic unemployment or underemployment or from a disability that makes employment impossible, it creates stress that can affect other areas of the person's individual life and the life of their family.<sup>10</sup> The Collaborative process, which uses a team of Collaboratively trained professionals including lawyers, mental health coaches and financial professionals, recognizes the importance of addressing the whole problems of the individuals and not just the legal conflict. The team works together using the skills of all of the Collaborative professionals to reach a resolution that is sustainable.

***Creating partnerships between Collaborative Practice Groups and LSC funded programs will maximize the delivery of Collaborative advocacy to low income clients.***

The series of articles in this *Collaborative Review* are designed to help Collaborative professionals develop volunteer *pro bono* or low *bono* programs in the geographic areas in which they practice. Although there are challenges, volunteer Collaborative professionals are successful in helping *pro bono* clients resolve their divorce related conflicts using the Collaborative process, as shown in a recent case in Tampa Bay, Florida.<sup>11</sup>

LSC funded programs are excellent partners for developing Collaborative *pro bono* programs in local communities. Local legal service programs understand the needs of their clients and may be a referral source to a Collaborative *pro bono* program. The Ithaca Area Collaborative Law

Professionals and the Tompkins-Tioga Neighborhood Legal Services Referral Program are an example of a successful partnership in which the legal services program refers clients to the Practice Group for Collaborative resolution of conflicts. Local Collaborative Practice Groups may also be able to learn about funding resources or even partner on grants with their local legal service provider.

***LSC funded programs staffed with Collaboratively trained professional staff may offer the best means to deliver Collaborative advocacy to eligible clients.***

Using only volunteer Collaborative professionals to represent *pro bono* clients in civil cases including divorce may not be the best use of resources. Because I believe that the Collaborative process is a tool that can be successful on a wider scale, I would suggest that LSC provide grant monies to staff a model program with Collaborative professionals who use the Collaborative process to resolve family law related conflicts.

LSC recognizes that the strength of their legal services lawyers is that they are experts in the subject laws and the processes that best serve the programs' low income clients. Legal services lawyers then use their expertise to train and support private lawyers so that the legal services the volunteer lawyers provide are competent regardless of the level of experience. A LSC funded model Collaborative program would enhance and broaden the delivery of services through the Collaborative process.

As part of this model program, the office would have on staff neutral mental health professionals, neutral financial professionals and Collaborative attorneys. To avoid an ethical conflict of interest, the staff Collaborative attorneys could represent only one of the parties to the conflict because the attorney is an advocate for her client and not a neutral. Private Collaborative counsel for the second party might be provided on a volunteer basis or by being retained at a reasonable fee.

As with other legal services programs, the staff of this program would become experts in their field--the provision of the Collaborative process that best serves low income clients. In their role as experts, the LSC model Collaborative program could provide support in the community for other volunteer Collaborative programs provided by local Practice Groups or professional associations.

**What are the next steps for delivery of Collaborative advocacy to address access to justice: a call to action.**

The Collaborative process holds much promise for resolving the legal conflicts of low income individuals and families especially in the area of family law. As Collaborative professionals, I would encourage us to champion this process and claim a seat at the table of the providers of legal services to the poor. Specifically, I would encourage the following actions:

- Begin conversations between members of local Practice Groups and staff of the local legal service programs to understand the conflict resolution needs of low income individuals in their communities and how the Collaborative process may help to address those needs.
- Begin a conversation between IACP and LSC on a national level about how the Collaborative process may be able to address access to justice.
- Consider forming an IACP foundation that could provide donor-funded grants to local programs using the Collaborative process to serve the conflict resolution needs of low income individuals.

Broadening the use of Collaborative Practice to serve low income individuals will strengthen the process and make it more widely available. Beginning a conversation with LSC will help us to achieve the goal of using the Collaborative process to address access to justice.

**Notes**

<sup>1</sup> Legal Services Corporation, 2012 Annual Report 4. These numbers have increased by 21% since the recent economic recession. In 2007, 50.8 million Americans met the income eligible criteria set by LSC. Id. 7.

<sup>2</sup> To be eligible for *pro bono* legal services funded by LSC, the total household income of an individual must not exceed 125% of the poverty guidelines. Legal Services Corporation, 2012 Annual Report 18. The Poverty Guidelines are determined annually by the U. S. Department of Health and Human Services and published in the Federal Register. The Poverty Guidelines are based upon the poverty thresholds updated each year by the U.S. Census Bureau.

<sup>3</sup> Legal Services Corporation, 2012 Annual Report 18.

<sup>4</sup> *Low bono* clients are individuals who exceed the eligibility criteria for *pro bono* services but do not earn enough money to afford to hire counsel. Luz E. Herrera, "Rethinking Private Attorneys Involvement Through a 'Low Bono' Lens," 43 Loyola of Los Angeles Law Review 1 (Fall 2009).

<sup>5</sup> Recognizing "the depth of the unmet need [of unrepresented litigants], including the resulting burden on the court system and the stress on other public resources," the General Assembly of Maryland has recently commissioned a Task Force to Study Implementing a Civil Right to Counsel. <http://www.mdcourts.gov/mdatjc/taskforcecivilcounsel/index.html>.

<sup>6</sup> When considered in 2012 dollars, the Congressional appropriation in 2012 of \$348,000,000 was the lowest appropriation since its inception in 1976. The highest appropriation, in 2012 dollars, was in 1980, when LSC received an appropriation of \$853,862,000. As recently as 1995, LSC received \$602,609,000, also in 2012 dollars, a significant difference from the 2012 appropriation. Legal Services Corporation, 2012 Fact Book 3.

<sup>7</sup> In 2010, the U. S. Department of Justice established the Access to Justice Initiative to address this issue. <http://www.justice.gov/atj/>. States have also formed access to justice boards to address this problem; e.g., The Washington State Access to Justice Board formed in 1994 by the Washington Supreme Court, <http://www.wsba.org/atj/>; The Maryland Access to Justice Commission, <http://www.mdcourts.gov/mdatjc/about.html>.

<sup>8</sup> Legal Services Corporation, 2012 Annual Report 14.

<sup>9</sup> Janet Stidman Eveleth, "E-filing on the Horizon for Maryland Lawyer," Maryland Bar Journal (November 2010) <http://www.courts.state.md.us/mdec/pdfs/barbulletin201011.pdf>.

<sup>10</sup> The Neighborhood Legal Services Corporation (NLSA) of Pittsburgh recognized the synergy between social issues and legal issues when they created The Law and Social Work Partnership Program in 2012. The social work services through the NLSA program not only help to resolve the legal conflict but provide support to prevent the reoccurrence of the same conflict. Justin Karter, "Justice in the Margins: The Intersection of Law and Social Work," Community Voices, Post-Gazette.com. (November 29, 2012) <http://communityvoices.post-gazette.com/news/ipso-facto/35047-justice-in-the-margins-the-intersection-of-law-and-social-work>.

<sup>11</sup> Sue Carlton, "Divorce with Collaboration? It Can Happen," Tampa Bay Times, September 20, 2013 <http://www.tampabay.com/news/courts/divorce-with-collaboration-it-can-happen/2143012>; Shannon Behnken, "Collaborative Divorce Offers Easier Way to Separate," WFLA-TV News, September 20, 2013, updated October 18, 2013, <http://www.wfla.com/story/23486640/collaborative-divorce-offers-easier-way-to-separate?clienttype=mobile>.





# *Is it Possible to Serve Clients Through a Time Limited Pro Bono Program?*

*By Catherine Conner, JD*

*Our Collaborative team met for the first time at 12:30 p.m. and our clients, Anna and Steve, arrived at 1:00. We introduced ourselves and described Collaborative Practice and how we would work together that afternoon. We asked them to tell us a little about their situation. Steve told us that they were pretty much in agreement and just needed our help to finish their divorce. He explained that they had a three year old son who lived with him and his parents, that Anna was from another country and that she would be returning there to start a business with his financial help, and that she would come back about once a year to spend time with their child. One member of the team asked Anna about the situation from her perspective. She was reticent to speak, but indicated that was what they had been talking about.*

Our Collaborative Practice Group, the Collaborative Council of the Redwood Empire, conducts a time limited *pro bono* Collaborative Practice program for low and modest means clients. Self-represented clients are referred to our program from our local court and screened for suitability. We provide a Collaborative team consisting of two lawyers, one coach and one financial professional for a four hour session at no charge to the clients. We have modified the Collaborative forms and process to adapt to this short time frame. Our Participation Agreement is one page long and is sent to the clients in advance with a short description of our process and the principles underlying Collaborative process. We meet the clients for the first time at the beginning of the four hour session, having decided at our short team meeting which attorney will represent which party. Our recommended timeframe allows for approximately 30 minutes to introduce everyone, review the process and sign the Participation Agreement. After finding out about their situation, we then review the financial forms which they have been asked to complete in advance. By 2:00 PM, we divide up for brief separate meetings. One party meets with his or her lawyer and the coach, the other with his or her lawyer and the financial professional. The coach and financial professional switch halfway through the 30 minute meetings.

*Anna and I met with the coach. During the course of our*

*conversation, we learned that Anna actually wanted to stay in the US, wanted to spend more time with their son, and had plans for how to improve her employment situation. She had been reluctant to speak up because Steve was so certain about how things should happen. The coach asked questions to explore the possibility of domestic violence, but Anna was clear that domestic violence was not an issue. We explained that the expression of her views was a necessary part of the decision making and the importance to their child of an ongoing relationship with her. We coached her about how she could talk about what was important to her. The coach then switched with the financial specialist. The financial specialist was able to review Anna's budget with her and give her some referrals for resources that could help her obtain the vocational training that she wanted. Meanwhile, the coach met with Steve and his lawyer and discussed how the healthy development of their child would likely be dependent on Anna being more involved as a parent than she would be under the plan he proposed. He disclosed that his biggest fear was that Anna would return to her country with their child and he would not be able to see him again.*

After the separate meetings, the professional team and the clients meet together for approximately two hours. Typically, the most pressing questions are identified, interests developed, and options discussed for those pressing issues. Sometimes, when additional information is needed, the parties have brought it with them. Other times, we have to make assumptions or fashion an agreement that is dependent upon obtaining the information. At the end of the two hours, if an agreement has been reached, the lawyers draft a Memorandum of Understanding, which is reviewed and revised by everyone and then signed by the clients. Fortunately, our court has a service that assists the clients with the paperwork needed to obtain a Judgment. If an agreement has not been reached, we discuss the other options for obtaining their divorce. At the end, we ask them to complete evaluation forms about their experience.

*When we reconvened, Anna told Steve that she wanted to spend more time with their son, that she would prefer to*

*stay here, and that she had plans for vocational training. Steve told Anna that he was afraid she would take their son to her home country and not return. He also said that his parents were planning to move a few hours away and he wanted to move there also because they were an important support system for him and their son. Anna and Steve agreed to a different parenting schedule with more time with Anna, Anna agreed to move to the same locale as Steve and his parents because she could do her training there, and they agreed to protections to alleviate Steve's fear about Anna taking their son out of the country and not returning. In their evaluation forms, Anna wrote that she had learned how important it was for her to speak up and Steve wrote that he learned that he needed to create the opportunity for Anna to speak.*

Our *pro bono* program, which we call "Dispute Resolution Day," has been very well received by the parties, the Collaborative professionals, and our court. We have now finished 32 cases, with 30 resulting in an agreement. While the "Anna and Steve" case is striking for the clients' remarkable shifts, this case and others have shown us that much can be accomplished in a short time frame with an agreed upon process, a good team, and the knowledge that time is at a premium. The following are suggestions for implementing a time limited Access to Collaboration program.

1. **Good screening.** Not every case is well suited for a time limited process. This type of program is not appropriate for cases with substance abuse, mental illness, coercive control, domestic violence, or complicated financial issues. We have a screening form for potential clients to complete and they have a screening meeting with one of our group members to determine if the case is a good fit for the program. Occasionally we have discovered during the four hours that the case is more complicated than anticipated. If we cannot serve them in the limited time frame, we then refer them to another process.

2. **Advance preparation.** When a case is assigned to our program, a team coordinator is assigned and sends the clients the Participation Agreement, our informational sheets, and a request that the clients prepare and bring financial information using specified forms and documentation such as paycheck stubs. Although we do not yet have an educational component incorporated into our program, it could be quite helpful to have some method of assisting parties in advance to enhance their communication skills or financial knowledge. The probability of reaching an agreement in a time limited program would increase if the parties had the opportunity to attend a class in advance

that provided basic financial information (e.g. here is how you can work on a budget) and communication skills (e.g. how to describe your concerns in an effective manner).

3. **Structured process.** We have a recommended agenda with tight timeframes. Although we have flexibility within that agenda, the structure keeps us on track. We frequently refer to the agenda, how much time has passed and how much is left, which keeps everyone focused.

4. **Team coordination.** The assignment of professionals to cases is designed to include members with different levels of experience, but always includes at least a couple of experienced practitioners. Team preparation is critical. This is not a situation in which you can fly by the seat of the pants and skip that prebriefing. We make sure we know who will be handling each part of the agenda, who is scribing, who will handle what type of glitch, and other process logistics. If dynamics issues arise, we need to address them immediately as there is not time to see how things evolve. We sometimes have a short professional-only meeting in the middle of the session to quickly check in, discuss any problems that have developed, and plan for what to do with our remaining time.

5. **Rush to Agreement.** One legitimate concern that has been raised about our model is the possibility that an agreement will be reached without sufficient consideration and that there may be "buyer's remorse" because the process unfolds so quickly. Although we do advise clients that it is not necessary to sign the Memorandum of Understanding on the day of the meeting, there can be emotions that lead people to sign an agreement in the moment, such as relief that their seemingly intractable situation has a solution. It may be that in designing a time limited program, it would be appropriate to build in some mechanism for a second shorter meeting to finalize and fine-tune the agreement.

Our experience is that the program has been beneficial to the clients, our Practice Group, and the court. Almost uniformly, even in the cases in which we have not been able to reach an agreement, the clients are grateful for our services when they had previously felt lost or stuck. The court is appreciative of our ability to help people reach agreements and keep those cases out of the court system. Our Practice Group has benefitted from the opportunity to provide *pro bono* services as well as the chance to work with other members with whom we might not yet have worked.



# *An Organic Approach to Pro Bono and Low Cost Collaborative Cases: Interview with Collaborative Attorney David Murch*

*By Erin McKinley, JD*

Collaborative Practice in the Rochester, New York area is at an exciting crossroads of change: Collaborative family law professionals, many with years of Collaborative Practice experience, are merging into leadership positions in the greater Rochester community. Litigators no longer exclusively control the medium or the message here, and the trend is to normalize the Collaborative process. Key organizations are adopting a flexible, case by case approach, to make Collaborative Practice accessible to clients of all income strata – an approach that is an extension of what many Rochester Collaborative professionals have been doing informally for more than a decade.

David Murch agreed to talk about this purely voluntary, build-it-as-you-go, method of handling *pro bono* and low cost Collaborative cases.

David has been active in the Collaborative Law Association of the Rochester Area, Inc. since its inception, and is a past president of the association and current board member. He limits his practice exclusively to Collaborative law, but notes that his Collaborative practice isn't limited to family law, as Collaborative principles are readily applicable to any area of conflict. David's practice is a blend of estate practice, family law and representation of small businesses.

## **Q. Can you explain how a *pro bono* or low cost case works in Rochester?**

**A.** All of these cases tend to be unique – there really is no common thread. What we try to do is rely upon the core principles of Collaborative Practice to guide us. It seems out of place to try to institutionalize or codify *pro bono* or low cost Collaborative services – it works so much better when you don't have to fit the case in to a set of specific rules.

## **Q. Can you provide some examples of what you have done in the past to form a Collaborative team for a low cost case? Are mental health and financial neutrals typically involved?**

**A.** It can work in a number of ways depending on the portal. If it comes to me, I just reach out to professionals with whom I enjoy working. Sometimes Legal Aid or the Voluntary Legal

Services Project (“VLSP”) call me and they may represent one party. Mental health and financial neutrals are typically involved. Sometimes financial neutrals assemble a team. The goal is to provide a quality Collaborative process regardless of resources.

## **Q. Once the team has been assembled, how do you determine the question of fees if the case is not to be *pro bono*?**

**A.** When available we defer to the financial neutral to put together an equitable plan and present it to the group. Normalizing the cost of a process as just another set of concerns to be addressed is helpful. When Legal Aid or VLSP are involved, costs may be paid for by only one spouse.

## **Q. What type of arrangement might the financial neutral suggest?**

**A.** In one recent case, our financial neutral met with the couple, and determined with them what amount of money they could afford to pay. The neutral used a formula to suggest how fees might be handled. The parties applied for loans from their 401k accounts. From there, the professionals and the parties agreed on what the lump sum to each professional would be, and the case proceeded. I really don't see these cases as any different than other Collaborative cases – there is just one more issue for all of us to address.

## **Q. So going into the case, you had no idea of how much of your time would be paid and how much of your time you would volunteer.**

**A.** Yes, and that was acceptable to me because it was a case that I chose to work on, and we had assembled a good team. I remember that when I was litigating, it was not uncommon to write off 10% – 15% of my receivables because the clients either couldn't pay or chose not to pay at the end of litigation. I did not have much control about where I spent my unpaid efforts. Now, I can decide on where I place my philanthropy; it is rewarding and empowering.

## **Q. How might fees be handled in a case where there is no financial neutral?**

**A.** I recently worked on a case where the one spouse was represented by Legal Aid, and I agreed to represent the other

spouse for a fixed fee, based upon what that spouse could afford. The fixed fee probably paid me about half of my regular hourly rate.

**Q. In that situation were you concerned that the case would take longer than it should?**

**A.** No, that wasn't really something I was worried about. The fee in that case was more important to ensuring the client's commitment to the process. I wonder if people value what they pay for and tend not to look at volunteerism as having equal value.

**Q. Is your group's custom of offering low cost Collaborative services something that was a planned effort or something that evolved over time?**

**A.** Our group did not plan it and I view it as an individual effort of each professional.

**Q. Why do you think this has worked well for your Collaborative community?**

**A.** It is human nature to accept what we build and struggle with that which is imposed upon us.

**Q. About how many low cost cases would you estimate have been handled by your Practice Group to date?**

**A.** I do not have a sense of our volume. I have handled one to three cases per year for several years and I hear from colleagues that they are also experiencing *pro bono* or reduced fee representation in similar numbers.

**Q. What have you found to be the key issues that the professionals need to address to succeed in a low cost case, and are those issues different from what needs to be addressed in a *pro bono* situation? How so?**

**A.** Buy in. We want clients to commit to the process because they trust that it will be successful and proceed with integrity. If there is nothing at stake, what supports us when times get tough? Often a component of what holds people in a process is the cost of leaving or the cost of litigating. If there is no cost, what are the stakes? Conflict and resources do not correlate.

**Q. Can you say more about that?**

**A.** Not long ago, I agreed to take a *pro bono* case that was referred from VLSP. I was concerned about the clients' commitment to the process because in that case, they didn't have any buy in. It felt to me like the case progressed quite slowly. Ultimately, the couple left the Collaborative process. They were unable or unwilling to keep their Collaborative commitments. People sometimes exhibit the same patterns in divorce that didn't sustain them in the marriage and expect a different result.

**Q. Can you share some of the current ideas about *pro bono* efforts that are under discussion by your Practice Group?**

**A.** The Bar Association and the Court system would like to participate in Collaborative process. This energy is around institutionalizing *pro bono* efforts to measure and credit *pro bono* efforts and reduce the strain on the court system. It is hard to reconcile a voluntary process with involuntary generation, control and administration. A good idea exists on its own. It is the voluntary commitment that is the heart of collaboration. I am advocating that our Collaborative association encourage and not govern *pro bono* efforts.

**Q. Describe what you see happening in the larger legal community of Rochester.**

**A.** Recently, I took part in a bar association training for lawyers new to matrimonial law. It was sponsored by the Family Law Section of our local bar association. *Pro bono* was front and center.

Our family law section chair is a Collaboratively trained lawyer. The panel of four attorneys she picked to present all have Collaborative training, and it was one of the first times that collaboration and mediation process were presented in a bar association sanctioned training in Rochester as mainstream options rather than alternative dispute resolution.

Legal Aid sent a full compliment of attorneys and VLSP was also represented. The incoming head of Legal Aid is Collaboratively trained, as is the head of the VLSP. The perfect! We had an informal meeting afterwards and collaborated ideas. More meetings are planned.

**Q. What happened when these leaders came together?**

**A.** The last thing we need is another bureaucracy in either their agencies or our organization. I am opposed to a judicial referral system. One of our members advocated that the Court system would be a valuable referral resource. Our consensus is that we can make an impact with an organic approach, case by case. The Collaborative idea stands on its own as voluntary and fluid. It can adapt to address the conflict at hand and needs of the participants. The idea that it can be ordered or institutionally structured is antithetical to the underlying principles.

A voluntary process is an option available to clients of all income strata. We have informally approached the members of our Collaborative Practice Group and nearly all are willing to take a *pro bono* case - we have about 55 members. For couples who want to use Collaborative family law, Legal Aid is willing to assign one of their Collaborative professionals and select one Collaborative law professional from our roster.

The VLSP can be available to handle conflicts for cases that might transfer to court. We are going to regroup in a couple of months to see how this progresses.

Our idea is to make room for the professionals to do these cases and to invite rather than demand participation.

**Q. Why do you think your Collaborative colleagues are willing to participate?**

**A.** Collaborative professionals can gain valuable experience by volunteering to take Collaborative cases, and this makes a positive impact on the Collaborative community and the community at large. The more Collaborative cases we complete the more traction Collaborative family law has in becoming mainstream. I learn something every time I work collaboratively.

**Q. What are the reasons you devote unpaid time to Collaborative cases?**

**A.** I like the idea of deciding how I will spend my efforts. I have also found that I learn more during Collaborative cases than I ever did litigating. In litigation, the lawyers have a very guarded, competitive way of working with each other. In Collaborative cases we can let our guard down, which creates more space for learning from each other. I also find that I learn so much from working with the financial and mental health professionals.

**Q. Will the allied professionals also participate in the cases that originate from Legal Aid? Will there be anything different about their participation in a *pro bono* case versus a paid case?**

**A.** Yes, Collaborative professionals from all backgrounds have expressed a willingness to participate and it is essential that we treat all professionals in a similar manner. From a philosophical perspective, I do not believe that *pro bono* work is just for lawyers.

**Q. Will the evolving partnership between your Practice Group, Legal Aid, and VLSP focus on just *pro bono*, or also have a low cost services component?**

**A.** We are thinking that low cost or some cost, however small, is part of the buy-in. People value what they choose and contribute towards. Financial need does not correlate to conflict. I think we can address that issue on a case by case basis. It is just one more issue to be addressed in the process.

**Q. How are cases involving domestic violence being addressed in your community?**

**A.** We think that DV, on the spectrum, allows room for the Collaborative family law process while maintaining safety of the

clients and professionals. Right now, a high percentage of DV cases are handled by Legal Aid or VLSP. We have a DV court within Family Court. This is proving to be our biggest challenge. Some of us feel any DV disqualifies. Some of us feel that DV shouldn't necessarily disqualify us from proceeding collaboratively. This debate continues. Safety is everyone's concern.

**Q. Is there a particular *pro bono* or low cost case you have worked on that stands out for you, in terms of learning something valuable about Collaborative Practice?**

**A.** We had a high conflict couple with a high community profile. Looking more closely, there was huge debt and children in college. There were significant emotional issues. We worked with the financial neutral to develop a pool of resources to partially fund a Collaborative process and the fees were negotiated and we began the process. The debt was scheduled and paid off. The lessons learned, had nothing to do with the financial concerns. The important skill the mental health facilitator taught me was how to narrow choices and keep the focus on the clients. They were kicking the barn doors down and it came down to drafting the agreement and inviting them to follow through or move on to litigation. The mental health professional asked them to give up the hope of a better past to invite a better future. In the end my client came up with multiple reasons not to sign and I let him know that it was his choice and that he had my support. It was not my job to talk him into it. I sat silently for what seemed like an eternity and my client signed it and got up and left my office. Letting go of outcome and remaining in advocacy provided enough support for my client to let go of the conflict. The family is doing well now, having moved past some very significant issues. Not perfect, but nonetheless priceless.

**Q. That must have been a very powerful moment - when you gave the client permission to walk away from the volunteer work that you had done - can you say more about it?**

**A.** It is as simple as letting go of outcome. I am not the Collaborative professional for a process or a result. I am mindful that my first obligation is to my client and the choices belong to the client.



# *Is there a place for a Pro Bono Collaborative Practice Clinic in Australian Family Law?*

*By Clarissa Rayward, LLB*

In an environment where families have ready access to mediation at almost no cost, is there a place for a *pro bono* Collaborative law program?

As a Collaborative practitioner based in Brisbane, Australia I do not profess to be an expert in family law outside of the Australian jurisdiction. However, over the past 12 months I have enjoyed a position on the IACP Access to Collaboration Task Force, which included Collaborative professionals based primarily in the United States of America, Canada and myself in Australia. Over this period I have enjoyed learning about *pro bono* Collaborative law schemes that exist primarily in the United States of America. As we have undertaken research into the *pro bono* programs that exist worldwide, I have been considering whether such a program could operate successfully in Australia. Of interest to me have been the differences that I have observed in the way family law matters are dealt with between Australia and the United States of America. There appear to be two significant differences.

Firstly, in Australia we generally have the benefit of a single set of laws that is implemented nationwide.<sup>1</sup> However, in the United States of America I understand that there are differing laws nationwide that can create vastly different outcomes for separating families. Secondly, in Australia we have had a significant legislative push towards alternative dispute resolution options, particularly mediation, for separating families. The amendments to our national laws, implemented in 2006, saw a vast change in the way family law has been practised in our country. From 2006 onwards, separating families wishing to proceed with litigation in relation to arrangements for their children must (save for some specific exceptions) first undertake some form of mediation prior to being able to commence proceedings in a Family Court.

Alongside the legislative reforms that occurred in 2006 came the establishment of a large number of government funded Family Relationship Centres. These Centres offer, amongst other things, mediation and other forms of dispute

resolution on all issues for separating families at either no or a significantly reduced cost. This has meant, for separating families in Australia, that there is ready access to professional assistance outside of the Court process at almost no financial cost.

It is my understanding that this legislative focus on alternative dispute resolution, coupled with the government assistance that has been provided in establishing and funding Family Relationship Centres, is unique to the Australian family law system and is a significant difference to the systems that I understand to operate throughout the United States of America.

Which leads me back to the initial question - in an environment where families have ready access to mediation at almost no cost, is there a place for a *pro bono* Collaborative law program in Australia? I think there is.

I say this as a Collaborative professional who is a trained mediator. While mediation has many benefits to offer separating families, I believe that Collaborative Practice has distinct benefits. The creation in Collaborative Practice of a 'team' of professionals and clients working together immediately separates this process from mediation. Legally mandated mediations, in my experience, often set adversaries against each other and can create an environment that only encourages positional bargaining.

As Pauline Tesler and Peggy Thompson have said "*The design of Collaborative divorce- with its team of professionals, its systematic attention to values, its emphasis on healthy relationships, and its focus on the future- takes into account the broad spectrum of what really matters to most people when their marriages end.*"<sup>2</sup>

This for me summarises with perfection the benefits of Collaborative Practice for any separating family. I expect that if Australian families were offered access to a Collaborative process in a well established *pro bono*

scheme, they too would soon see the range of benefits and would come running.

I see additional value for the growth of our National Collaborative Community in the establishment of *pro bono* clinics around our nation. Collaborative Practice is now a mainstream form of legal practice in the family law arena in Australia. Almost all States in Australia have Associations that promote the practice of Collaborative law to professionals and the wider community. Our national legal body, The Law Council of Australia, also has a sub-committee that promotes Collaborative Practice at a national level. While Collaborative Practice has been accepted into the Australian family law community, my research was unable to unearth any *pro bono* programs that are currently operating.

In my work on the IACP Access to Collaboration Task Force, I have seen three common themes that have led to practitioners establishing *pro bono* programs:

- Firstly, the desire to offer Collaborative Practice to a wide range of families, including those with limited economic means;
- Secondly, a desire to further promote Collaborative Practice in the community;
- Finally, to develop, teach and mentor Collaborative professionals in developing Collaborative communities.

A properly established *pro bono* Collaborative scheme could offer significant benefits to the further development of Collaborative Practice in our country. Such a scheme could offer training and mentoring to newly interested Collaborative professionals. Further, a scheme would offer the opportunity to grow a data base of information that could be used to track the development and utility of Collaborative Practice for Australian separating families.

Finally, the establishment of a *pro bono* Collaborative scheme would no doubt require significant input from a group of enthusiastic professionals. The sheer act of establishing such a program would help to generate the important professional relationships that are necessary for the successful development and promotion of Collaborative Practice in Australia.

The IACP Access to Collaboration Task Force has collated materials to assist practitioners wishing to establish *pro bono* Collaborative schemes. Those materials are readily

accessible to IACP members and I encourage my Australian colleagues to consider the utility of carefully constructed *pro bono* programs which will surely assist in spreading the word about Collaborative Practice, not only within our family law profession, but importantly to the wider community.

And who knows- with the right level of local support and enthusiasm perhaps we can convince the ‘powers that be’ to consider the inclusion of Collaborative Practice in the range of dispute resolution options provided by our Family Relationship Centres to further support Australian Families experiencing separation and divorce.

I encourage Collaborative Professionals world wide to consider the advantages to your local Collaborative community of a *pro bono* scheme. The advantages highlighted above would be common to almost any worldwide Collaborative community.

### *Notes*

<sup>1</sup> The author notes that Western Australia does operate under a separate form of legislation to the rest of the Commonwealth; however the laws are by in large the same.

<sup>2</sup> Pauline H. Tesler and Peggy Thompson “Collaborative Divorce: The revolutionary new way to restructure your family, resolve legal issues, and Move on with Your Life” (Harper Collins, New York, 2006) 30.





# *The Collaborative Project of Maryland: How Pro Bono Projects Can Find a Place in the Collaborative Community*

*By Suzy Eckstein, JD and Wayne Warren*

## **Starting the Project**

The mission of the Collaborative Project of Maryland (CPM) is to provide clients of modest means access to the full benefits of the Collaborative dispute resolution process either through the use of *pro bono* volunteers or on a reduced fee or subsidized fee basis.

Formed in January of 2011, CPM began with a group of Collaborative practitioners discussing the perception that Collaborative Practice is an expensive process. Many practitioners were meeting clients who would benefit from the Collaborative process, but who could not afford to pay market rate for Collaborative professionals (nor any other divorce professionals, for that matter). Professionals realized there were already resources for clients who chose litigation and could not afford to pay for attorneys, but no resources for those clients who wanted to use the Collaborative process but couldn't afford it.

## **How it Works**

Through a Pilot Project grant from the Family Division of the Administrative Office of the Courts of Maryland ("AOC"), CPM was able to secure office space and hire an Executive Director, who screens intakes from the public and matches individuals/families with Collaborative professionals. Professionals commit up to 30 hours each per case and are paid for their first ten hours at a rate of \$80 per hour through a combination of client payments and a Professional Fee Fund created from grants and donations. The last 20 hours are sliding scale payments from the clients ranging from \$0 to \$80 per hour depending upon family income. Services are provided by the professionals at their own offices.

## **Benefit to Families: A Case Study**

Benny and Terry were married for a little over 15 years. They have four children; Terry had never worked outside the home. Benny worked for a publishing company earning

\$80,000 until about three years ago. The couple bought a house in 2000. They were not wealthy but were able to make ends meet, pay their mortgage and pay their bills on the \$80,000 a year salary. Then Benny lost his job in the recession. He was unemployed for two years. Eventually Benny got a new job with FedEx where he started out earning \$25,000 a year. Over the course of a year, Benny received raises and was earning almost \$50,000 a year when he came to CPM. During his period of unemployment, Benny and Terry got behind the eight ball financially, including getting behind in their mortgage. The financial stress took its toll on the family. Benny became depressed and met someone else. Terry got fed up. Benny moved out but not before the bank began foreclosure proceedings. Terry was very resourceful and found out about CPM. Terry and Benny were clear that they shared a common goal of keeping the house for Terry and the four children. Accordingly, the Collaborative professionals were able to help the parties manage their emotions while researching programs which could help them refinance or modify the mortgage. Without the support of the Collaborative team, Benny would have been too distressed and distrustful to co-sign loan modification papers while the parties were dissolving their marriage. Fortunately, feeling well-informed and having considered all the consequences and options, Benny was able to co-sign with confidence. The parties were able to save the house and move forward to resolve all of the other issues related to their divorce. Benny, Terry and the children are doing as well as could be hoped.

## **An Added Benefit**

Through the AOC, CPM has had the opportunity to interact with and present to many different organizations with the Judiciary's support. By providing full Collaborative process services to families of modest means, an added benefit has been the ability to educate not only the families participating in the program and the organizations which serve them, but also others in the community who could both benefit from and afford the Collaborative process.



The following experience best illustrates this benefit. CPM was invited to present at training for 40 court personnel from all over the state. Not one single attendee had heard of Collaborative Practice. We used our allotted time describing the Collaborative process and discussing how court personnel might refer potential clients to CPM. We were pleased to be asked, “This sounds like a really great process - is it available for people who can afford it?”

### **How CPM Operates**

A critical component in developing the Collaborative Project of Maryland is our day-to-day operating philosophy. Over time, the Collaborative Project of Maryland has identified five Do's of sustainability for *pro bono/low bono* Collaborative projects:

**1. Do have Protocols and Forms in place:** Collaborative Project of Maryland's Board is composed of seven active Collaborative professionals (five attorneys and two mental health professionals) who have been leaders of Practice Groups, long time members of IACP, and trainers of Collaborative Practice both locally and nationally. Board members drew upon their Collaborative Practice case experience, developing forms and protocols modeled on the forms and protocols already available in their individual practices, modifying some as needed. Having protocols and forms readily available was key to delivering a professional and productive operation from day one.

The heart of the Project is the Intake Process. CPM thoroughly interviews potential customers to determine viability for the Collaborative process. CPM does not accept customers who have pending hearings, are entrenched in traditional thinking and motivation, or who are unable, even with the support of professionals, to have difficult conversations with their partners. In addition, CPM has found that certain types of matters, especially when one partner has little to gain by engaging in a negotiation (i.e. custody modification cases), can be difficult to place. Moreover, CPM is mindful of the balance between customers' needs and volunteer professionals' needs. Professionals who volunteer for the Project do not mind difficult and challenging cases, but impossible cases and impossible customers will frustrate the volunteers and over time will dilute the volunteer pool.

CPM follows the standards set by the Maryland Legal Service Corporation for income eligibility, which is

200% of the poverty level for *pro se* representation. In addition, CPM includes a sliding scale for reduced fee representation. CPM feels strongly that we want to serve customers who may be above the *pro bono* income levels, but still could not afford professional representation without the Project's assistance.

**2. Do tend to customers/clients:** CPM understands that many potential customers for the Project will have capacity limitations and logistical challenges, among them transportation, child care and internet access. CPM also understands that clients might have difficulty leaving work, so CPM's professional volunteers are very conscientious about how meetings are scheduled. After identifying customers for the Project, CPM keeps the lines of communication open to ensure that the customer understands the process and is comfortable moving forward. CPM consistently reiterates to customers the importance of attending and participating in the meetings.

**3. Do tend to volunteers:** CPM tends to volunteers in a variety of ways: by creating teams with varied experience levels, providing mentoring and professional coaching for newer professionals, and facilitating interaction with Practice Groups. CPM creates Collaborative teams by pairing a more experienced Collaborative professional with a less experienced Collaborative professional. Experienced professionals take on leadership roles and less experienced professionals obtain experience and become part of the Collaborative community. CPM also engages with the local Practice Groups to inform them about the Project, again, expanding the dialogue and communication about Collaborative Practice and inculcating the Project into the Practice Group's objectives. Practice Groups have been instrumental in volunteering their members, ideas, and support. CPM has helped Practice Groups by providing cases, ideas, and camaraderie.

**4. Do have a robust database:** CPM receives state funding so it is very important that data is recorded. CPM tracks the number of intakes, number of cases, number of hours professionals participate, and demographic data about customers. CPM has also found that it is important to document information about referral sources and intakes which do not result in a Collaborative case. Maintaining a database by employing staff or a volunteer with expertise in database management is essential given the requirements of grant reporting.

**5. Do have a strategy for developing cases:** CPM continues to hone its strategies for developing referral sources. CPM has found that referral sources that are close to the customer are the most likely to generate successful Collaborative cases and engage both parties relatively efficiently, ensuring that both are well informed about the benefits and the expectations of the Collaborative process. Having more direct links to and relationships with the customer also allows CPM to quickly match the customers with professionals, which increases the likelihood of a successful Collaborative case.

### **Garnering Community Support**

Community support from varied sources was one of the most instrumental components in the successful creation and establishment of CPM. One important and obvious form of support has been the Judiciary. The grant funds provided by AOC were crucial. We are fortunate to have Connie Kratovil-Lavelle, the Executive Director of the Family Division of the AOC, serve as a link to the Judiciary. This link has created incredible opportunities and venues to spread the word to the legal community and the public.

### **Judiciary Partnership**

Just a few of the benefits of the Judiciary's involvement in Maryland:

1. Four fully sponsored three day interdisciplinary Collaborative trainings since March 2011 at little or no cost to participants. Participants are asked to volunteer for at least two Collaborative *pro bono* cases through CPM or other legal service provider organizations.
2. Numerous mini-trainings offering court personnel, Masters, Judges, and the professional community basic information about the Collaborative process.
3. AOC funded and worked with the Institute for Governmental Service and Research, University of Maryland, College Park to study and present in a report "The Current and Prospective Use of Collaborative Law in Maryland."
4. Training will be provided by AOC for the Maryland Legal Aide Organizations' family law attorneys in Spring 2014.

5. AOC worked with Maryland's Legal Services Corporation to expand their Judicare funding to legal services providers for use in Collaborative cases. The Judicare Family Law Project uses private lawyers who are paid reduced rates to serve low income clients and in the past, the Judicare funding was only available for contested custody cases.

6. A binder is given to Judges, Masters, Legal Service Providers and others in the legal community providing information on case law, trends in the country, information on passage of the UCLA, and ethics.

### **Other Partners**

Community Foundation. There are Community Foundations all over the United States that provide incubating non-profits an avenue from which to receive grant funds while waiting to receive their own 501(c)(3) status. The opportunity to receive the Pilot Project grant funds (only available to 501(c)(3) nonprofits) came before CPM was able to obtain its own 501(c)(3) status, so the Community Foundation filled the gap. We are happy to report that CPM now has its own 501(c)(3) status and is administrating its own budget.

Maryland Collaborative Practice Council ("MCPC") and area Practice Groups. MCPC is the umbrella organization for Practice Groups in the State of Maryland. MCPC initially gave CPM support in the form of seed money to create our non-profit organization and apply for 501(c)(3) status. MCPC also made it part of its mission to support CPM in any way possible, including a centralized link to the Practice Groups who provide the majority of our volunteers. Individual Practice Groups also support CPM in many ways, including offering to provide a line on their membership renewal form for donations to CPM and pledging 100% participation from their members to volunteer for CPM.

Collaborative Practice Centers. The Collaborative Practice Centers formed in our area are another source of support and CPM is fortunate enough to have two; one in Washington, D.C. and one in Montgomery County, Maryland. Both of these practice centers provide meeting space for board meetings. The Collaborative Center in D.C. houses some of the board members and also allowed one of their law clerks to help CPM with research pertaining to employment issues. The Collaborative Center in

Montgomery County provides reduced rent for CPM's main office and unlimited administrative assistance.

Established Legal Service Providers. Established legal service providers are also an essential support system. Maryland has a *Pro Bono* Resource Center that provides support to all legal service providers in Maryland. CPM has learned that it is important to nurture these relationships in order to assist one another and not encroach on clients or volunteers which allow such organizations to receive their funding. Some of the ways we have discussed working together are: providing an additional attorney when another organization's panel attorney is utilized, providing mental health and financial professional volunteers, and providing mentoring for volunteers in each of the professions. In addition, CPM volunteers have attended Legal Aide's *Pro Bono* Days for the public and self-help clinics in our courthouses to assist potential clients in determining if the Collaborative process is right for them.

University of Maryland and University of Baltimore Law Schools: Both law schools in Maryland have been instrumental in providing legitimacy and connections for projects such as CPM and Collaborative Practice in general. University of Baltimore Law School offered assistance through a Collaborative Process Clinic available to students. University of Maryland Law School currently offers a semester long course, Collaborative Law and Practice, and has suggested CPM volunteers attend their "Just Advice" Clinic for the public to determine if potential clients are interested in using the Collaborative process. The above illustrates just some of the ways we have worked together with other members of the community. We have also met with community organizations, divorce support groups, and community ministries (a coalition of homeless shelters, churches, and other community organizations).

### **Conclusion**

The prospect of developing a program to bring the full benefits of Collaborative Practice to families of modest means is both exciting and daunting. We have learned a lot, we are all working really hard, and we still have a lot to learn. We are looking forward to working together with the global Collaborative community to continue learning from each other. The rewards to professionals and families has been well worth the continuing journey.

# Save the Date

## 15<sup>th</sup> Annual Networking and Educational Forum

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The Westin Bayshore, Vancouver  
October 23 - October 26, 2014





# *Collaborative Conferencing Clinic: Building the Future of Collaborative Practice While Providing Access to Collaboration*

*By Teresa F. Parnell, PsyD*

A unique partnership between the Loyola Law School Center for Conflict Resolution and the Los Angeles Collaborative Family Law Association provides an opportunity to benefit family law clients who otherwise could not afford to use the Collaborative process, enhance the legal education of law school students, and provide experience opportunities for newly trained Collaborative professionals.

## **The Program**

After considerable planning and preparation, Loyola began family law cases through its Collaborative Conferencing Clinic at the beginning of the fall 2013 semester. Trained Collaborative practitioners from the Los Angeles Collaborative Family Law Association (LACFLA) provide a Collaborative team of two lawyers, one mental health professional and one financial professional at no cost to family law clients. In addition, a mediator from the Loyola Mediation Clinic is present and functions as a neutral in the Collaborative process. Cases are expected to complete in one session if possible but practitioners commit to up to two four-hour sessions for each case. If after two sessions the case is not resolved, the clients are referred to mediation or the case is terminated.

Clients in divorce and paternity actions agree to participate voluntarily. They are informed that a team of professionals will assist them in reaching agreements regarding their legal action while law school students shadow the process. Clients are provided with information in advance about the Collaborative process and the specific procedures of the clinic. Clients are expected to provide documents (i.e., current court orders, financial documents, declaration of disclosure, etc.) and complete a questionnaire that determines the complexity of the case and the professionals needed. Clients are introduced to interest-based negotiation and effective communication skills. A Participation Agreement is signed which includes the provision that if the clients are unable to reach agreement, the professionals involved will not represent them in any future hearings with the court.

Law school students who participate in the Collaborative Conferencing Clinic enroll in one five-day training. Two days of the training are a Family Law Primer while the remaining three are a formal Collaborative training. Loyola provides the facilities for training while practitioners from LACFLA provide the training at no cost to students. The students do not actually handle the Collaborative cases but instead shadow the attorneys. However, students do work closely with the attorneys and Collaborative team members so that as their proficiency increases, their role within the Collaborative team can increase. Law school students benefit from seeing a dispute resolution approach in action, with real parties, and learn skills associated with family law matters. The students build relationships with practicing lawyers and other professionals in the community while gaining the experience of working with other professional disciplines that are vital in family law cases. Students further benefit from understanding the importance of providing *pro bono* services.

## **The Sessions**

The team is assembled one-week prior to the Friday meeting with the clients. A lawyer is linked with each party. A four-hour session is conducted with the lawyers, a mental health coach, and financial professional present as well as the mediator. The professional team and clients review the Participation Agreement, an overview of the four-hour meeting, the expected results, and a guide for the Collaborative process. Clients are reminded of the interest-based negotiation information they were given. Breakout sessions are conducted with the coach and attorney to identify conflict areas and highest priority issues. Clients may meet with coaches to review effective communication skills, review the process and learn calming skills. Clients may meet with the financial professional and attorney to review declarations and disclosures. When the team and clients come back together, the clients present their interests/needs and an agenda is created. The financial professional leads the brainstorming on financial items

while the mental health coach leads the brainstorming on parenting plan items. The attorneys contribute legal guidance. The coach may also reframe and assist in maintaining the focus of the clients on priority issues. The mediator is designated as the scribe for the creation of the Memorandum of Understanding. The document is reviewed and finalized in the meeting. If this is not accomplished in one four-hour session, then a second four-hour session is scheduled.

### **Development of the Program**

Practice Group members expressed a desire to gain more experience in Collaborative Practice and to market their skills to others in the community. Other members asked how they could give back to the community. The Collaborative community had an existing foundation on which to build this program due to a longstanding alliance between the law school and the Los Angeles legal community through the well regarded Mediation Clinic at Loyola. LACFLA and the Mediation Clinic were able to partner and pool their resources - Loyola provided facilities, mediators, and students, and LACFLA provided trainers and Collaborative professionals. The Mediation Clinic is the primary source of clients for the program. The program also identified 20 to 30 local agencies that deal with low-income clients and sent letters or made contact with them to let them know about the program. In addition, there has been extensive outreach to members of LACFLA, the local judiciary, and the wider community to educate professionals about the availability of this project. Through this project, LACFLA hopes to serve the community as well as create a vibrant stream of new members from the law school students to support the growth of Collaborative Practice.

### **Interview with Adjunct Professor Kevin Chroman**

Los Angeles attorney Kevin Chroman described this newly formed and well-designed program. Kevin is an ardent supporter of Collaborative resolution to family law disputes and is passionate about bringing the Collaborative process to families of all income levels. He serves as Adjunct Professor of the Collaborative Conferencing Clinic at Loyola Law School and Board Member of the Los Angeles Collaborative Family Law Association (LACFLA). At LACFLA he further serves on the Affordable Divorce Committee.

### **The Experience**

**Question: Kevin, how did you make the decision to develop a *pro bono* program with Loyola?**

Originally, my idea was to create a mentoring program for law students. There was a desire to give back and provide students with guidance, insight and exposure in addition to what is received during the traditional law school curriculum. I had the very good fortune of having a professor during my law school career with whom I connected, Professor Mary Culbert. Her guidance and support were invaluable during that time, and remain invaluable. I kept in touch over the years, and when the concept of a mentorship plan arose, she was my first call, or email, to be precise. Professor Culbert suggested creating a course. Meetings were arranged on several occasions with her staff, me, and Board members of LACFLA to discuss what could be done to develop a program for the students. The Center for Conflict Resolution has been providing *pro bono* mediation services to the underprivileged for over twenty years. LACFLA has been encouraging consensual dispute resolution for fourteen years. Adding a Collaborative component to The Center's infrastructure was a natural conclusion. The question was not one of if, but when could we begin.

**Question: What do you see as the main benefits of working in conjunction with a law school?**

The benefits of working with Loyola are manifold. First, Loyola's Center for Conflict Resolution is one of the top mediation facilities in the country for assisting low-income people in resolving disputes. They have all of the infrastructure, including the space, the staff, and many of the forms. The opportunity to be associated with them, and collaborate with them on this project, has been extremely helpful in implementing this program so swiftly and efficiently. Its reputation, and the reputation of Loyola Law School, has created opportunities to meet with the judiciary, forge relationships with them and begin implementing new programs. Second, exposing the students to real life cases while educating them about the advantages of Collaborative Practice, is a mutually beneficial act, as it provides them with practical, problem-solving, skills while planting the seeds for future Collaborative attorneys. Finally, the members of the Collaborative community have been very receptive to the students. Every case is a mentorship experience whose

positive effect on both the students and professionals is almost tangible.

**Question: Are you concerned that a case will take longer than two sessions?**

Because The Center for Conflict Resolution offers classic mediation sessions, in addition to the Collaborative mediation sessions, the parties can have additional mediations with the same mediator to resolve any outstanding issues. Thus far, the parties have all expressed a motivation to complete as much as they can in one session. And, generally speaking, most cases were brought to complete resolution in one session. The teams and the Center both encourage parties to create durable agreements with which they are satisfied. This means they should never feel pressured. Our goal is to usher them through their process in a manner that is comfortable for them, at their own pace.

And, in fact, there have been a couple of cases where the parties were simply not prepared to settle. Interestingly enough, those parties provided glowing reviews of the process, expressing extreme gratitude for the teams' efforts and support. One party at the end of the session insisted on addressing the team. He stood up and lavished praise on the team members and the program, expressing deep gratitude for their time and efforts as well as sincere appreciation for their dedication. The parties may not always leave with a written settlement. However, they leave with the feeling and knowledge of being heard, understood, and their issues clarified in a safe environment.

I do believe the parties have a strong sense of the depth and breadth of professional assistance being provided to them, and recognize that the resources should be utilized as fully as possible. Moreover, the couples also have a strong interest in working to provide for their children, and keeping the lights on. Therefore, they prefer to not miss work by returning for a second session. Thereby, while they are aware that they are welcomed to return and have a full team further assist them, the loss of one day's income and other similar factors (i.e. child-care), function to encourage the parties to resolve their issues in one session. On a personal note, it is quite eye-opening to consider the fact that the cost of missing one day's work is inspiration enough to certain low-income participants to resolve their issues timely, despite the fact that they are receiving free services from otherwise highly paid professionals. Yet,

how often have we experienced high income clients who repeatedly spend money on fees, while missing work, to fight over the dishes and the value of tchotchkes?

**Question: How many *pro bono* cases have you handled thus far through this program?**

There have been seven Collaborative mediation cases this semester. Five of the cases settled. The other two cases created terms of settlement. In both of those cases the parties needed additional time to review and consider the information.

**Question: Has this project worked well for your Collaborative community?**

The Collaborative community has responded very well to the project. Members new and old, more involved and less involved, have all signed up for the project. It has re-generated interest in older members, while providing experience for newer members. In addition, it provides opportunities for people within Practice Groups to gain valuable experience working with one another in the event they have not had a case together. It also allows professionals from different demographics to work with one another. Teams may consist of a seasoned professional coupled with a less experienced professional. Also, professionals from two geographical areas, who would not otherwise have the opportunity to work alongside one another, have the opportunity to do so.

**Question: What have you found to be the key issues that the professionals need to consider to succeed in a *pro bono* case?**

One of the defining factors of the *pro bono* cases is the limited finances of the parties. Whereas in higher income matters it is more likely for a party to concede relatively small dollar amounts, those same dollar amounts in low-income cases are the difference between affording gas to make it to work, or taking the bus. It is important for all professionals to be cognizant and respectful of this.

**Question: Is there a particular *pro bono* case that stands out for you?**

There was a mono-lingual Spanish speaking case which was very rewarding. To watch everyone patiently exchanging their thoughts through the use of interpreters, while assisting this couple to reach resolution, was special.

There was also a case where the parties had few assets but their families had funds. That was challenging. The one that stands out the most was the case where all of the professionals worked tirelessly to address various emotional issues simmering under the surface of a party, while helping to forge a fair and just settlement. In the end, one party was simply unwilling to settle, for personal reasons. Nonetheless, both parties in that case expressed considerable appreciation for the team's services.

### **Final Thoughts**

The Collaborative Conferencing Clinic at Loyola continues the law school's longstanding tradition of commitment to *pro bono* legal service while providing that service on the cutting edge of family law education. By linking the interests of legal educators with the needs of legal

practitioners, this program is ideal to meet the changing face of law school education. Increasing access to Collaborative Practice for a broader range of family law clients is really the goal of *pro bono* and *low bono* programs. By educating the next generation of lawyers at the same time, programs of this type have the potential to reach beyond the current clients served by the program in to the future of Collaborative Practice. That is truly a win-win-win for now and into the future.

## 4<sup>th</sup> ANNUAL IACP INSTITUTE MILANO MARRIOTT ~ MILAN, ITALY MARCH 27, 2014 – MARCH 30, 2014



Online Registration is Now Open!  
Visit [www.collaborativepractice.com](http://www.collaborativepractice.com) and register today.



# *Creative Approaches to Providing Collaborative Services to People of Modest Means*

*By Jeff Seigle, JD*

The expansion of Collaborative Practice to low income clients is expanding in much the same way as Practice Groups did ten to fifteen years ago. Some programs are created and administered by Practice Groups, some by local bar associations or Legal Aid organizations, some by state or local government entities, and some by law schools. The most positive news to report is that there are many practitioners across the country with access programs. Through the use of *pro bono* or “low *bono*” (sliding fee scales, lower hourly rates, or lower flat fees) programs, our fellow Collaborative divorce practitioners are attempting to bring our groundbreaking processes to the poor or near poor populations around the world. The following is a description of the different types of programs that the IACP Access to Collaboration Task Force has identified over the past year.

## *Practice Group Programs*

### **Modest Means Committee (Albany, New York)**

This program developed by The Collaborative Divorce Association of the Capital District has been widely accepted by the attorneys in the Practice Group who have demonstrated a strong willingness to accept cases. In this model, Practice Group members refer potential clients to a volunteer attorney coordinator who matches the clients with volunteer Collaborative professionals. This is a pure *pro bono* model.

### **Dispute Resolution Day (Santa Rosa, California)**

The Collaborative Council of the Redwood Empire conducts a time limited *pro bono* Collaborative Practice program for low and modest means clients. They provide a Collaborative team consisting of two lawyers, one coach and one financial professional for a four hour session at no charge to the clients.

(see "Is it Possible to Serve Clients..." on page 9)

### **One Case Collaborative Project (Central Florida)**

This reduced fee program is sponsored by the Collaborative Family Law Group of Central Florida. Clients must have

a combined gross income of \$100,000 or less. Cases are referred to the project coordinator of the Practice Group and then assigned to a team of professionals who have agreed to accept the reduced fee until the case is finished and to use the Participation Agreement and Engagement Agreement provided by the project. The team includes attorneys at \$100 per hour, and a mental health professional and financial neutral, each at \$50 per hour. An inexperienced professional may shadow the process at no charge to the clients. The anticipated length of service is 20 hours per professional. The process requires that the clients complete certain steps before the first meeting and throughout the process to increase the likelihood of completing the case within 20 hours. Clients have reportedly been very pleased with the project.

### **Collaborative Family Law Clinic (Raleigh, North Carolina)**

This is a new “low *bono*” program administered by Carolina Dispute Settlement Services (CDSS), a community mediation center, using attorney members of the Separating Together Collaborative Practice Group in Raleigh, North Carolina. Couples are screened by CDSS for income eligibility (family income of \$75,000 or less). Attorneys are then assigned to the couple and receive a sliding scale fee. Mental health professionals and financial neutrals are also involved on a sliding scale fee basis. The program’s first two cases are about to begin and adjustments to the program will occur based on the experience in those cases. CDSS has used social media to advertise the program and has received many inquiries.

### **Cincinnati Academy of Collaborative Professionals *Pro Bono* Divorce Program**

This valiant effort by the Cincinnati group did not turn out well because the clients did not seem to be screened properly for the program. In this program, Legal Aid referred individual clients to the Practice Group coordinator. The hope was to provide up to three Collaborative sessions, unless more were agreed to by the



parties and lawyers. The program used volunteer lawyers and the courthouse as a neutral location. Court social workers were available as neutral mental health professionals. The clients were generally interested in “free” divorce as opposed to the Collaborative process. The model may still work, but the screening process will need to be modified.

#### **Rochester, New York – Informal Practice**

This program is a reduced fee (and occasionally *pro bono*) initiative offered by the Collaborative Law Association of the Rochester Area. CLA of Rochester takes an interesting case by case approach as to how to involve professionals and assess fees for the parties.

(see "An Organic Approach to *Pro Bono*..." on page 11)

#### *Bar Association Programs*

##### **Allegheny County Bar Association Legal Referral Service Modest Means Collaborative Law Panel (Pittsburgh Area)**

This program is administered by the local Bar Association. Attorneys who have had 12 hours of training may sign up for the panel. The Modest Means program charges participating attorneys a \$50 annual fee to cover administrative costs. Clients pay \$60 per hour for the legal services. Clients are self-referred to the panel, and their household income must fall within 200% of the federal poverty level. One of the challenges for the panel has been getting lawyers to volunteer. An advantage enjoyed by the program is having the Bar Association’s existing referral service to piggyback onto, so that funding, structure, and administration were already in place.

##### **Hillsborough County Bar Collaborative Law Section (Tampa, Florida)**

This *pro bono* program uses volunteers from various Practice Groups associated with the Bar section. The program partners with Bay Area Legal Services which identifies potential families for referral. They have just successfully finished the first *pro bono* Collaborative case in the state of Florida. Volunteers are looking for more opportunities to gain Collaborative case experience.

#### *Government sponsored programs*

##### **Assigned Counsel Program of Tompkins County, New York**

This program added the Collaborative option to an existing divorce program that is funded by the county. Income-eligible

clients file a petition with the County Family Court and complete the Assigned Counsel application indicating that they desire a Collaborative lawyer. The program is limited to custody cases. Attorneys on the panel are paid \$75 per hour by the county. In appropriate cases, judges will also appoint a child specialist who is paid by the county. Clients are very pleased with the alternative, but expanding awareness of the option has been a struggle.

##### **CPS Collaborative Project (Dallas, Texas area)**

This *pro bono* program is strictly funded by and for Child Protective Services cases in the Dallas, Texas area. After cases are appropriately identified by CPS, the cases are randomly assigned to a rotating base of volunteer attorneys. The attorneys then choose mental health professionals from a rotating list. Each of the parents has an attorney, the children have an attorney, and CPS has a regional attorney. The case continues until the children are reunified with the parents and CPS closes the case. The number of meetings is not limited. Experienced practitioners are teamed up with new practitioners, allowing for both mentoring and the opportunity for Practice Group members to work with attorneys they may not have previously worked with.

##### **Collaborative Family Law Center (New York, New York)**

This program is operated by the New York State Unified Court System. It primarily offers free divorce mediation, but also matches clients with *pro bono* volunteer Collaborative attorneys. The cases may be handled at legal aid clinics by trained Collaborative attorneys where clients must be screened for income eligibility. They may also be handled by Collaborative attorneys in private practice who decide whether or not to take the case on a *pro bono* basis. This program has a web presence at <http://www.nycourts.gov/ip/collablaw/>. The mediation component of this program partners with Cardozo Law School’s Divorce Mediation Clinic and receives daily inquiries. The program accepts both e-mail and telephone inquiries and may refer the case to either mediation or Collaborative Practice. The program also helps mentor attorneys who are newly trained in Collaborative Practice.

##### **Collaborative Project of Maryland**

This is an extremely successful program that is supported by the Administrative Office of the Courts. Attorneys are offered free CLE to take the Collaborative training and agree to take cases in trade.

(see "The Collaborative Project of Maryland..." on page 16)

**Ramat Gan Collaborative Divorce Center  
(Ramat Gan, Israel)**

This program is a reduced fee program administered by the municipality of Ramat Gan. Mental health professionals are on staff and paid by the city. Clients pay the attorneys on a sliding fee scale. Clients are referred to the program by the city's counseling office, by attorneys affiliated with the program, through the program's website, or by other general referrals. Any resident of the city may use the service.

**Tompkins-Tioga Neighborhood Legal Services Referral Program (Western NY)**

This program is a *pro bono* effort supported by referrals from Legal Services. Legal Services has added the component of Collaborative Practice to its regular program of referrals to divorce attorneys. Attorneys volunteer to be part of the program and receive CLE credit in return. Legal Services refers the clients to the attorney volunteers by e-mail after determining that they are income eligible. One of the challenges is finding an attorney volunteer where only one of the spouses qualifies financially. The clients have been pleased with the program.

*Law School sponsored programs*

**Collaborative Conferencing Clinic at Loyola School of Law (Los Angeles)**

This program is a joint endeavor of the Loyola School of Law and the Los Angeles Collaborative Family Law Association (LACFLA). It is a *pro bono* clinic with a team of two attorneys, one mental health professional, financial neutral and law student observers.

(see "Collaborative Conferencing Clinic..." on page 20)

Additional information about low cost or *pro bono* Collaborative programs is available on the IACP website. IACP hopes that you will use this information to brainstorm and network with other Collaborative professionals to create your own programs. Not only will you be fulfilling the ethical obligation and professional responsibility of providing access to legal representation for people of low income or modest means, you will also be expanding the reach of Collaborative Practice.

Launching an Access to Collaboration  
Program in your Community

**PRACTICE GROUP  
PHONE  
BRIDGE**

**Thursday, March 13, 2014**

**1:00 PM Pacific Time**

**Access to Collaboration:  
Pro Bono and Low Cost Services**

**Join members of The Access to  
Collaboration Task Force who will  
share their experiences and provide  
guidance for creating a *pro bono* or low  
cost Collaborative access program.**

**The conference call in number will  
be posted in February - visit  
[www.collaborativepractice.com](http://www.collaborativepractice.com)  
for more details.**



# *What's In It For Us? How Pro Bono and Low Bono Collaborative Programs Benefit Collaborative Professionals*

*By Jeremy S. Gaies, PsyD and Teresa F. Parnell, PsyD*

You can learn a lot from what you overhear. During the cocktail hour following a Collaborative Practice Group meeting, two professionals were chatting. “I don’t know what they’re really trying to accomplish with this *pro bono* program. It seems like a lot of time and energy that does next to nothing for our group!” The reply was an echo of that sentiment: “I feel the same way. I suppose it makes the do-gooders feel good, but it doesn’t really do anything for the rest of us. And giving free services to a few families is not going to change the world, is it?”

This exchange reflects a common view among those who question the benefits of *pro bono* Collaborative work. While these types of comments might make us cringe, they can lead to useful discussions about the goals of these efforts. In essence, they raise two valid questions. The first question is purely pragmatic: Does having *pro bono* or low *bono* programs benefit Practice Group members and the local Collaborative community? The second question is a bit grander: Will it make a difference in the world? The authors have carefully considered these questions, and our answer to both of them is a resounding, “Yes!”

Let’s start with the first question. How, in fact, does a no-cost or a modest means program benefit the Practice Group members and the Collaborative community? We propose five important benefits.

The first benefit to the professional is simply the opportunity to participate in a Collaborative case. Newly-trained Collaborative professionals often wait months, and sometimes years, for the opportunity to participate in their first Collaborative case. *Pro bono* and low *bono* programs increase the number of available cases in a community by offering the Collaborative process to families who cannot afford the typical costs. These programs add opportunities for practice that would simply not otherwise exist. It is important to recognize that these programs are not taking cases from fee-based Collaborative teams. Instead, they are adding to the pool of Collaborative cases available. The

greater the number of cases available, the more opportunities for practitioners to serve on Collaborative teams.

The second benefit is the experience gained by professionals who are taking on their first cases. Learning comes not only from the act of participating in a Collaborative case, but also from the mentoring that is a natural part of the team configuration. Most *pro/low bono* teams are designed to mix more experienced Collaborative professionals with less experienced Collaborative professionals. This is different from the typical fee-based Collaborative team, which is often comprised of highly experienced professionals who have worked together on other cases. The less experienced professional benefits from the teaching that naturally occurs when working alongside a seasoned Collaborative attorney or a seasoned neutral. Further, *pro bono* and low *bono* programs frequently allow a Collaborative professional to shadow the entire process, thus creating an invaluable learning opportunity for an additional professional each time a case is conducted.

The third benefit is increasing the ability of professionals of all experience levels to be time-efficient in the Collaborative process. We learn with every case, especially in our early years as Collaborative practitioners, but *pro/low bono* cases challenge us to be particularly mindful of how to get the job done in the most efficient manner possible. No-cost and modest means programs tend to have limits, whether in regard to the number of meetings or the total hours of service. Learning how to make progress within those limits can be tremendously helpful in developing streamlined approaches to the Collaborative process. These approaches benefit not only our modest means clients, but also our fee-based clients, including those who have moderate (but not unlimited) resources. Time management constraints also encourage professionals to learn about resources outside of the team (i.e., classes, books, community-based mental health and financial programs, etc.). There is less urgency in fee-based cases for professionals to be aware of these resources and to encourage client responsibility, but there are costs to

having the professionals provide services that might be available elsewhere. Challenging ourselves to discover the balance between team assistance and client accountability may ultimately make the Collaborative experience more constructive -- and a better value -- for all of our clients.

The fourth benefit is the opportunity for networking through *pro bono* and *low bono* programs. *Pro/low bono* Collaborative teams may mix Practice Group members with prospective members. They may also bring together members of different Practice Groups within the same metropolitan area. In both cases, there is a fostering of interaction among professionals who might not otherwise cross paths. In addition, these programs can serve as a point of entry to the Collaborative arena. Professionals wanting to enter the Collaborative world may encounter entrance barriers to established networks, as not all Practice Groups accept all applicants. By developing relationships among Collaborative professionals through *pro/low bono* networking, we strengthen our Collaborative community. On a qualitative basis, we know that strong relationships build proficient teams. On a quantitative basis, it is intuitive that a larger and more connected Collaborative community generates more referrals for everyone.

The fifth benefit comes from the awareness within the community that is generated by all modest means programs. Every successful Collaborative case creates the possibility for spreading the message of the Collaborative movement. Not only do satisfied clients spread the word, but so do those who have referred them, those who are related to them, those who work with them or worship with them or live next door to them. Word-of-mouth is the best advertisement for the great product that the Collaborative process produces, regardless of whether the process is fee-based, reduced fee, or fee-free. *Pro bono* and *low cost* programs also garner significant media attention. That attention may focus on the altruistic aspect of the service, but it may also put a spotlight on the Collaborative model itself. It is said that all publicity is good publicity. When the word about Collaborative Practice spreads in association with acts of generosity, that press is pretty hard to beat!

Based on all of these benefits, it seems obvious that individual professionals, Practice Groups, and the local Collaborative community emerge as winners when we foster programs for families with limited financial means. But the grander question remains: Will *pro bono* and *low bono* Collaborative work really change the world?

The answer may be found in understanding that collaboration is more than a process. It is more than a method, more than a technique, more than a strategy. Collaboration extends beyond the actual families with whom we work and beyond our very careers. Collaboration is a perspective about how the world should work. It is a philosophy about how human beings can and should interact with one another, both in resolving conflicts and in enhancing the lives of everyone around us. It is for this reason that Collaborative Practice has become a true movement. We are not just a professional organization or a guild. Instead, *we are an idea of how to create a better world*. That lofty goal has driven our movement to amazing advances in a surprisingly brief period of time. Think about it: When did you first hear about Collaborative divorce? For most of us, it was not all that long ago, yet look at how far the Collaborative movement has come!

If collaboration is about creating a better world, then every Collaborative step is worth taking. Our society benefits each time a family is able to move forward with their lives by reaching an agreement without the trauma, turmoil, and damage that are common to litigation. *Pro bono* and *low bono* programs will not be able to help every family who might seek these services. They will, however, reach families who would otherwise have no hope of achieving the type of peaceful divorce that the Collaborative process offers. Helping those in need, especially those who have few alternatives for meaningful and creative conflict resolution, is indeed a part of what we can do to change the world. Our work matters. Beyond all of the practical benefits of *pro/low bono* work, let us not forget that the work is noble, and when we perform it, it ennobles us.

So the next time that you are attending the cocktail hour after a Practice Group meeting, and you overhear some colleagues who are doubtful of the benefits of *pro bono* and *low bono* programs, we suggest that you share with them some of the benefits that these programs bring to all of us. The people they help may be themselves.



# Considerations in Designing an Access to Collaboration Program

By The IACP Access to Collaboration Task Force

*We encourage your Practice Group to consider an Access To Collaboration program of your own. The following is intended to assist you in thinking through the questions you'll want to answer as you consider the form your program might take.*

## **Goals of program:**

1. What is the goal of the program? Identify who will be served and what their goals and interests are.
2. Will a mission statement be created? A mission statement may be helpful in the following ways:
  - a. Unify organizing group with clarity about purpose and goals
  - b. May be necessary if outside funding will be sought
  - c. Provides a concise description of the purpose of the program to potential partners or referral sources

## **Existing resources:**

1. Who is providing the *pro bono* services in the community now?
  - a. Are they potential partners?
  - b. Are potential partners concerned about limited resources or referral sources? Are there ways to reassure them?
  - c. If there are existing programs, can there be more than one type of *pro bono* program in the community? Perhaps different programs can serve different populations.
2. What organizations/entities provide other services or resources to the potential clients? Could these organizations/entities provide valuable information about working with the potential clients or be referral sources? Would it be useful to have personal meetings with representatives from these other organizations/entities?
3. What are the funding sources for these types of programs in your community? Is there funding available from either a governmental or private entity? If governmental, is the best opportunity local, regional or national? Are there private foundations or other funding sources that provide grants or funding in your community (e.g. United Way)?
4. Are there existing organizations or people who can refer clients to the program?  
legal aid, judiciary, therapists, churches, synagogues and temples, bar associations and parenting education programs.

## **Type of program**

1. How formal will the program be?
  - a. Informal - Practice Group members agree on their own to handle a case on either a *pro bono* or low *bono* basis (e.g., program of the Collaborative Law Association of the Rochester Area).
  - b. Semi-formal - A team is identified to handle a case on either a *pro bono* or low *bono* basis through some organized mechanism such as the use of a volunteer coordinator (e.g., programs of the Ithaca Area Collaborative Law Professionals and the Collaborative Divorce Association of the Capital District).
  - c. Formal program - A program to provide *pro bono* or low *bono* services is structured to provide steps from beginning to end such as initial screening of eligible clients, identification and training of volunteers, creating the teams, supervision and evaluation of the process (e.g., Dispute Resolution Day of the Collaborative Council of the Redwood Empire; Collaborative Project of Maryland; Texas CPS Collaborative Project).

## Considerations in Designing an Access to Collaboration Program (continued)

d. Use of existing programs - An existing program to provide *pro bono* or low *bono* services is adapted to provide the Collaborative process as an alternative to litigation and mediation (e.g. Allegheny County Bar Association Modest Means program).

2. Will it be *pro bono* or low *bono* or flat fee?

- a. *Pro bono* - Provided at no cost to the individuals who qualify for services by reason of income eligibility (e.g., household income does not exceed 125% of the poverty guidelines).
- b. Low *bono* - Provided to individuals whose income exceeds the guidelines for receipt of *pro bono* services; sometimes referred to as a “modest means” program, low *bono* programs require the individual to pay a reduced fee that is set in advance based upon income eligibility (e.g. 200% of the poverty guidelines or sliding fee structure).
- c. Flat fee for streamlined procedure - A Collaborative process that is limited to a defined number of hours or number of sessions at a flat rate that may be available only to clients who meet the income eligibility guidelines (e.g. the household has less than \$100,000 in income).

3. Will professionals be totally volunteer or be paid at some low rate?

- a. *Pro bono* – No fees paid
- b. Reduced rate – Significantly reduced % of normal hourly rate
- c. Sliding scale from \$0 to modest rate
- d. Fixed fee for case

4. What types of matters and scope of those matters will be included? Only family law or other types of matters? Only certain aspects of family law (e.g. only custody, only financial)?

### **Structure of program**

1. Will the process be a standard Collaborative model or a clinic approach with fixed time or activities?
2. Will there be time limitations to the services provided? If so, how will the time be structured?
3. Will there be some type of process streamlining – e.g. in types of professionals used or how they are used?
4. What type of paperwork will be used? Will there be abbreviated forms? Will paperwork be revised to be more simply worded? Will there be a standardized participation agreement and other forms or will professionals use their personal agreements and forms?
5. Will there be any type of educational program or classes offered or required to prepare clients for a streamlined process?
6. How will proceedings be stayed while collaborating (if needed)?
7. What type of recordkeeping will be maintained? Will there be a person or an entity that will serve as a central repository for information about cases? How will the information be gathered? Will there be surveys of clients and/or professionals? Who will collate the information from the surveys? What will be done with the information that has been gathered?

### **Point of entry**

1. Will there be a coordinating body and if so, what will that be?  
Practice Groups, Legal Services Corporation or other Legal Aid group, law school, court, bar association, administrator and practitioners.

2. Who will be the point of entry for the potential clients? What will be the logistics for the point of entry? (e.g. phone call, personal contact, email inquiry)

3. What will be the screening requirements for clients? Will it be different for *pro bono* or *low bono*?

4. How will volunteers be matched with clients and who will do that?

(Consider the balance between having enough volunteers and making sure no one is overlooked)

5. Is the program providing a team for the entire family or professionals for any party who qualifies? If the program provides professional(s) for one party based on need, what will be the impact of private fully paid professionals for one party and volunteers/low cost professional(s) for the other? Is this feasible?

### **Volunteer Training and Quality control**

1. How will you ensure the quality of the program?

2. Will there be professional requirements related to the volunteer's profession (e.g. licensing, professional experience in field)?

3. Will there be the minimum Collaborative training required for volunteers and if so, what will be that minimum? If volunteers haven't had any Collaborative training, will there be a basic training provided in exchange for a certain number of volunteer hours?

4. Will there be training regarding the program for volunteers? If so, who will conduct it, when, and what will be the content?

5. Will there be observers at meetings as part of the training program for volunteers or for new Collaborative professionals?

6. How will new Collaborative professionals function in the program? (e.g. paired with more experienced professionals)

7. Will there be evaluations by clients and professionals at the end to monitor the quality?

8. If in partnership with another entity, is there a requirement for volunteers to have professional liability insurance? Will professional liability insurance be required if your program is independent?

### **Public education regarding program**

1. What type of marketing will be needed to direct potential clients to the point of entry?

Presentation to court coordinators and judiciary, using future volunteer Collaborative professionals to make presentations, advertising, website and contact with other community organizations that serve the targeted population.

2. How will clients be educated about the program so they won't be suspicious that it is a discount program in which they aren't getting good quality services?

*IACP supports Collaborative Practice as a conflict resolution option worldwide by:*

- *establishing and upholding the essential elements, ethical and practice standards of Collaborative Practice;*
- *fostering professional excellence by educating and providing resources to Collaborative practitioners;*
- *leading and integrating the Collaborative community; and*
- *promoting the growth of Collaborative Practice.*

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