

How Collaborative Practice Will Improve Your Profitability

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—Robert J. Merlin

Although there are many reasons to practice Collaborative Law, increasing your financial bottom line should go right to the top. You can enjoy working with families more than you do as a litigator or forensic expert and make more money in the process. In this chapter, I offer some tips to increase your profitability, both from my own personal experience and from other professionals who have made the transition from litigation to a Collaborative Practice.

IF YOU BUILD IT, THEY WILL COME

As with any business, you need confidence in your product. You also need confidence in your professional skills, and you should be willing to talk about yourself. You have competition as a family law professional, regardless of whether you practice in a small community or a large metropolitan area. To succeed, you need to differentiate yourself from the other practitioners in your community: what makes you and your approach worthy of a consumer's trust and confidence?

Many years ago, I chose to increase the quality of my service by expanding my knowledge of mental health issues, including child development, communication skills, the effect of stress on the development of a child's brain, and intimate partner abuse. Most family attorneys classify training in this area as unnecessary to deliver legal services and defer that expertise to therapists. However, my increased knowledge has given me a greater understanding of the relational dynamics between my client and his or her spouse/partner. It has also enabled me to better understand psychologists, licensed marriage and family therapists, licensed clinical social workers, and mental

health counselors when we discuss the challenges facing our mutual clients. I believe that my ability to work with their research and theoretical concepts and speak their language instills a level of trust in my skills; this, in turn, increases the likelihood that I receive referrals from mental health professionals and their colleagues.

If you take courses and training in the mental health field, you can grow your practice, whether or not you choose to become a peacemaker. However, if you want to attain success as a Collaborative Lawyer, the first step is to buff up your Collaborative skills. Even the most experienced and successful Collaborative Lawyer started with a first Collaborative case. The most successful Collaborative Professionals seem to be those who continue to expand their knowledge and skills by continuously going to trainings, lectures, and other programs to hone their Collaborative skills. The mere fact that you have attended one introductory training for 2 or 3 days does not mean that you are ready to offer competent Collaborative services. Each time I attend a Collaborative training or program, even if it is another introductory training, I gain a new perspective and new skills—and these go directly into my Collaborative Toolbox. My attitude is that I cannot get enough education and training. Furthermore, I believe that clients select me, in part, because of their sense that I am up to date on current skills and trends.

You also need to have confidence in your office managerial skills. Most practitioners are afraid to eliminate litigation from their practice because they fear that their income will decrease. However, limiting your practice to Collaborative Law and other nonadversarial methods will force you to become much more efficient in the operation of your office. I have had a number of litigation clients who refused to pay what they owed to my firm—a common problem for most law-related professionals around the world. My receivables have dramatically reduced since I focused on practicing in a nonadversarial way. This enables me to spend more time on the real practice of law or on things that satisfy me personally, instead of going after former clients to collect the money that they owe to me.

Management skills do not come naturally to most family law professionals. The ability to manage your practice is a learned craft. Reach out to successful Collaborative Attorneys, even if they live in another state or country, to find out tips about how they manage their practices. I have found that Collaborative Professionals are willing to be generous with their time to help others become better Collaborative Professionals. You can also join the Collaborative Practice Yahoo! listserv (free of charge) to learn about the challenges facing other Collaborative Practitioners. To join, send an empty e-mail (no subject, no content) to CollabLaw-subscribe@yahoogroups.com, and then follow the instructions. Feel free to ask questions of the group; do not be shy or feel ashamed. Remember, even the most experienced Collaborative Practitioner was a novice at one time and looked to other professionals for advice.

Part of my learning curve in gaining management skills has been learning how to manage myself. I have needed to become more disciplined in my time management and other aspects of my life. However, this is not a huge burden. I no longer wait for a judge to schedule a hearing or enter an order. I now have much more control over how my daily schedule is developed. I can schedule joint Collaborative meetings weeks in advance; it also is much easier for me to schedule telephone conferences with my colleagues. Furthermore, I can schedule many more breakfast and lunch meetings with potential referral sources, which benefits my law practice.

Sometimes, it is difficult for an attorney to manage his or her staff and associate attorneys. My entire office has become more efficient because I do not have to do some of the things that are mandated by statutes and rules. Some Collaborative Attorneys have been able to reduce the size of their staff because they no longer need personnel to handle the issues that invariably come up in litigation, such as gathering unnecessary or duplicative documents to produce to the other side and trying to coordinate hearings with the judge's office and opposing counsel. I no longer spend time or money to prepare trial notebooks. Although I still do some legal research, the amount of research that I do now is significantly less than what I did for litigated cases.

HAVING A NON-COURT PRACTICE INCREASES PROFITABILITY

Just as there are positive reasons why attorneys create a Collaborative Law practice, there are many reasons why attorneys increasingly dislike and are moving away from a litigation practice. Some of those reasons include the following:

- A. *A litigation practice is very stressful.* Simply put, there is a huge amount of stress related to litigation. Perhaps much of that stress is because the professionals and clients have so little control over the litigation process. In addition, arbitrary deadlines are imposed upon the parties, their attorneys, and experts, which do not exist in a Collaborative Practice. This combination causes stress and pressure on both parties and professionals.
- B. *Trial lawyers and litigation experts have difficulty controlling their office life.* When you are at the mercy of a judge, you cannot control the pace and priorities of your office operation. Your entire office needs to abide by court-imposed deadlines and schedules. This can result in attorneys, expert witnesses, and staff working well into the night to prepare for court deadlines and hearings.
- C. *Opposing attorneys in litigation cases tend to be more difficult to deal with than Collaborative attorneys.* Although signing a Collaborative Participation Agreement with an attorney disqualification clause does not guarantee

smooth cooperation, this written commitment to work collaboratively and treat everyone with respect and dignity is generally followed. I have also found that litigation attorneys seem to be more aggressive and demanding than Collaborative Attorneys, which results in litigated cases being more difficult to manage. Furthermore, many litigation attorneys follow the philosophy that “winner takes all,” which is very different from the Collaborative Process. I have found that “nice” lawyers who assume the litigation role often want to notch another mark on their gun belt and will do anything to “win.” This is very different in my collaborative cases, in which I treat the other lawyer as part of the “team” for the family (while still maintaining my professional and ethical duties to my own client).

- D. *Many professionals move to Collaborative Practice to reduce unpaid bills.* Outstanding receivables seem to be a way of life in litigated cases. There is not a procedure in litigated cases (other than additional litigation) to help professionals collect their fees. As discussed later in this chapter, the collection of fees is part of the Collaborative Process. Trial professionals in every community and around the world all have problems collecting their fees. However, there is normally much more work in litigated cases than in Collaborative cases, which naturally results in more fees being billed in litigated cases. Too often, these additional billings are never collected because people going through a family crisis often do not have the financial ability to pay the fees that are owed. Clients who owe money sometimes file (or threaten to file) for bankruptcy, which is often enough to force a family law professional to discount fees that are owed just to collect something, rather than being forced to write off the entire receivable.
- E. *Lawyers like control and do not like having their professional lives controlled by a judge.* In litigation, a third party—the judge—makes the decisions for the parties and controls the pace of the case. Most judges work very hard and are highly qualified, but many family law judges do not have the training and knowledge to handle the complicated issues that exist in family law. Judges generally value caseload management over the needs of an individual litigant. A judge will decide when to schedule a hearing and how much time to give to the parties. The judge will also determine when to issue a ruling, which can take many months. Clients become frustrated with their attorneys because they cannot get their “day in court,” and judges and their staff get upset with attorneys who repeatedly call to inquire about hearings being scheduled and orders being entered. Furthermore, it is very difficult to explain to a client why a judge made a decision when the attorney has explained the applicable law to the client or an expert has made a convincing case, yet the judge did not follow that law or expert perspective. The mere existence of the threat of an appeal from a litigated case, which can delay the finality of a proceeding by more than a year, should be enough to convince professionals to avoid litigation.

When the judicial system is used, the clients easily become frustrated with how their case is being handled (or in some cases, not being handled), and unhappy clients result in fewer referrals. Clients who understand the “system” and are satisfied by staying out of court are more likely to refer others to you.

THE FINANCIAL BENEFITS OF A COLLABORATIVE PRACTICE

The financial benefits of a full-time Collaborative and peacemaking practice include the following:

- A. *Collaborative clients tend to have more financial means than most litigation clients.* There are a number of pro bono and “low bono” Collaborative projects throughout the country. However, generally speaking, Collaborative clients have more assets and higher incomes (which produce more sophisticated legal and financial issues) than a typical litigation client. Clients who choose to use the Collaborative Process understand the financial (and nonfinancial) benefits of using a system that is private, enables the parties to determine their own destiny, and will preserve their relationship rather than destroy it through litigation. Those clients also have wealthier business and personal networks, which result in referrals of other wealthy clients to the Collaborative Professional.
- B. *Happier clients translate into a good professional reputation.* If you help a client obtain a positive and cost-effective resolution, that client is more likely to refer friends and relatives. The client is also more likely to give you a positive online review. This cycle results in long-term financial benefits.
- C. *Your receivables will be reduced.* As stated previously, Collaborative Professionals tend to have significantly fewer uncollected receivables than litigating professionals. This is partly because, at least in my community, the payment source of Collaborative Professionals is identified at the first joint Collaborative meeting. In addition, if a professional is owed money, the payment of fees is placed on the agenda of the next joint meeting. The result is that all professionals and the clients discuss how each professional’s fees are going to be paid as the matter proceeds. The professionals, collectively, help each other get paid so that the case can progress. This is very different from litigation, in which the opposing counsel frequently interferes with the other attorney being paid. Collaborative clients are expressly informed from the beginning that the attorneys need to be paid; if a Collaborative Attorney is not paid, he or she will withdraw from representing the client. Such withdrawal can cripple or terminate the Collaborative Process, which could lead the clients to litigation—a result they are seeking to avoid. Through the Collaborative

Process, both clients and all of the professionals should have an accurate understanding of the family's financial condition. The Collaborative Attorney should know early in the process whether the client or the family will be able to pay the professionals' fees. In litigation, such understanding is not determined until later in the process. Furthermore, unlike litigation cases, the Collaborative Attorney does not have to wait for a judge to decide whether the other client should pay for the attorney's fees; that issue can be addressed at any time during the Collaborative Process.

- D. *The Collaborative professional does not do as much tedious work.* The work and billing of a Collaborative Professional is much more focused than that of a litigator. For instance, Collaborative Practitioners do not have to prepare for or take depositions, draft motions to compel the other party to do something (as this is done voluntarily in the Collaborative Process), or wait for hours outside of a courtroom for a hearing to take place. The Collaborative Professional can focus on the client's true interests, which produces greater efficiency and cost savings.
- E. *There is a high correlation between helping clients and profitability.* When your focus is to have a client directly solve problems rather than go through the hoops of litigation, the client will appreciate you more and tell others how good you are.
- F. *The Collaborative process can enable a practitioner to reduce overhead and the number of staff needed in the office.* The efficiency of the Collaborative Process helps to achieve better office management. Staff is not needed to fill out many of the court forms that are required in litigated cases. Using Neutral Financial Professionals enables the Collaborative Attorney to avoid the necessity of reviewing every bank, investment, and credit card statement in detail. This does not mean that the Collaborative Attorney should not be familiar with the clients' records; however, it enables the attorney and his or her staff to spend time on reaching an agreement, which results in lower fees.
- G. *Collaborative Professionals can represent more clients.* It is true that Collaborative Professionals do not bill as much as litigation practitioners; however, we collect fees for a much higher percentage of our time. I do not have to make all of my annual income on one case. I am able to be paid for my services in one case and move on to the next case. More happy clients directly translate into more likely referral sources.
- H. *You should get more referrals from financial and mental health Collaborative professional.* By working together on an interdisciplinary team, Financial and Mental Health Collaborative Professionals see your style and efforts up close and can better appreciate your value to other clients. They are more likely to refer their clients and friends to the Collaborative Attorneys who provide the best services to their clients.

LIFE IS MORE THAN PROFITS: THE NONFINANCIAL BENEFITS OF PRACTICING COLLABORATIVE LAW

The personal and nonfinancial benefits of being a peacemaker by having a Collaborative Practice cannot be emphasized enough. As a start, I believe that I will live longer and happier because I no longer litigate. The following are some of the personal benefits that I have found in shifting my practice:

- A. *Collaborative professionals have relationships that are built on trust.* I describe the Collaborative Process as professionalism at a higher level. I know that the attorney representing the other party in a Collaborative matter will do everything in his or her power to make sure that the client complies with the tenets of the Collaborative Process, just as the other attorney knows that I will do the same thing. We treat each other with respect. Furthermore, because we often work together on very difficult issues instead of working against each other in litigation, we generally have closer and more meaningful relationships with our colleagues. Money is nice, but it does not compare to having valuable relationships.
- B. *Less stress means a healthier me.* I remember working late into the night to prepare for trials and evidentiary hearings. I put so much pressure on myself to succeed and obtain a good result for my client. Now, my days are less stressful and more efficient.
- C. *“Opposing” attorneys are nicer to me.* I had a litigation case years ago in which my opposing counsel cussed me out because I did not agree that my client should do something that the attorney wanted my client to do. This complete lack of respect bothers me to this day. However, such a situation has never happened to me with my Collaborative colleagues. In fact, rather than calling each other “opposing counsel,” we refer to each other as “collaborative partners” or “collaborative teammates.”
- D. *I am proud of what I do.* Attorneys have a bad reputation throughout the world. I know that the work I do not only benefits my clients and their children, but it benefits society as a whole. Collaborative Professionals model behavior for their clients and Mental Health Professionals teach valuable communication skills, both of which dramatically reduce the amount of postjudgment litigation. Divorces and other family disputes are difficult and undesirable situations, but I help my clients weather the storm and come out on the other side in the best possible condition. Being a peacemaker has enabled me to do that on a regular basis— and allows me to sleep at night knowing that I have helped a client.
- E. *I can make a positive difference in my client’s life.* What we do as family professionals is a little odd: we represent clients for a short period of time and may never see them again once the representation has concluded. My goal is to put clients in a better position than when they first came to see me.

That is a laudable goal—one that all of us can aspire to. It is a thrill for me to see clients who develop the strength to move on with their lives in a new direction. I think that the Collaborative Process is uniquely suited to empower our clients to strive to be their best.

- F. *I have more time to be with my family.* Eliminating litigation has enabled me to go on more vacations, spend more time with my family, and do things outside of work that I want to do. I can make plans much more easily, and I do not have to worry about cancelling vacation because a judge has scheduled a trial for the time when I will be away. I also work fewer hours. I used to work virtually every Saturday. Now, I do not work many Saturdays, so I am able to play golf with my son or travel with my wife.
- G. *Cases conclude faster.* I had many litigation cases that took years to conclude. That no longer happens because Collaborative Professionals can be more efficient in handling cases. We usually help our clients to resolve their differences much faster than they would have through litigation. Furthermore, because Collaborative cases tend to proceed quicker than litigated cases, we tend to make money more quickly than in litigated cases.
- H. *I can hone my skills and increase my knowledge.* Since I have become devoted to having a peacemaker law practice, I have been able to go to more seminars and trainings, thereby increasing my skills and my ability to help my clients. I no longer strive to become the best possible litigator. I now strive to gain more knowledge and skills so that I can better help my clients. That is a dramatic shift in my philosophy, but I think it is shared with many other Collaborative Attorneys.
- I. *I have become a better person.* I believe that I have become a better person since I eliminated litigation from my law practice. I find myself being more patient and understanding of others. I also have a different, more accurate perspective on the judicial system. I now focus on things that are important, such as helping my client instead of focusing on “beating” the other attorney. Furthermore, the knowledge I have gained from attending trainings and seminars, especially on relationships and family dynamics, has helped me to become a better husband and parent.

CONCLUSION

There are many reasons for an attorney to transition her or his law practice into a peacemaking practice—one in which the Collaborative Process is a featured skill provided to clients. Certainly, one of those reasons is that Collaborative Law is profitable. I believe that this is the wave of the future, and I see many more attorneys and other professionals choosing to practice as I have chosen to practice. I hope that attorneys will not be afraid of taking the first step in this direction. Based upon my experiences, it is well worth it.

PRACTICE TIPS

1. As a Collaborative Professional, you can enjoy your practice and make more money.
2. Collaborative Practice has a very high success rate, which makes it easy to have confidence in your product.
3. To succeed, you need to differentiate yourself from the other family practitioners in your community.
4. Expand your knowledge to issues outside of your discipline. If you are a Financial or Mental Health Professional, take a course on family law. If you are an attorney, learn about mental health issues, tax consequences, and financial planning. As a side benefit, professionals of other disciplines may have more confidence and provide you more referrals.
5. Constantly expand your Collaborative toolbox through a career commitment in continual training and improvement.
6. Collaborative Practice gives you the opportunity to increase the efficiency of your office by reducing your unpaid receivables.
7. Reach out to successful Collaborative Professionals to gain tips on how they manage their practices.
8. Take advantage of free resources, such as the Collaborative Practice Yahoo! listserv or local LinkedIn or Facebook Collaborative groups or pages.
9. Court deadlines become a thing of the past for Collaborative Professionals.
10. Collaborative Practice provides you with the opportunity to regularly work with people who you know, trust, like, and respect.
11. Collaborative Practice tends to attract highly educated clientele with more financial means.
12. Collaborative Practice translates into high client satisfaction, which helps referrals and reduces malpractice concerns.
13. Address payment of professional fees regularly within the Collaborative Process; have an agenda item at each Collaborative joint session.
14. Mental Health and Financial Professionals are rapidly becoming entry points to and referral sources for Collaborative cases.
15. Shared trust, training, and commitment of Collaborative Professionals lead to closer and more satisfying professional relationships.



Known for helping clients reach settlement, Robert J. Merlin is committed to resolving divorce and other family law issues in the least adversarial way possible. Bob is a Florida Bar Certified Family Law Specialist who trains other professionals in the Collaborative Process and has a history of being involved in community organizations and taking leadership positions. Bob was the leading advocate for passage of Florida's Collaborative Law Process Act and argued before the Florida Supreme Court for the establishment of Collaborative Law Rules of Procedure and Professional Conduct. Bob is a member of the Board of Directors of the International Academy of Collaborative Professionals,

a former president of the Collaborative Family Law Institute in Miami, and a recipient of the President's Award from the Florida Chapter of the Association of Family and Conciliation Courts. Bob is also a member of the Peacemaking Practice Trainers.

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