

# Introduction

Forrest S. Mosten

Collaborative practice is a dream come true.

I went to law school to help people. Early on, I made a commitment to choose helping opportunities over activities that would pad my resume. Because I have been self-supporting since the age of 14 (another story for another time), during my second year in law school, I had the fortune to be offered a position as UCLA Assistant Dean of Foreign Students. Thirty hours a week, I was given the opportunities to counsel students from countries all over the world. This work permitted me to help them find solutions for their personal, financial, immigration, and other legal problems. In this position, I started my dream: to set up an interdisciplinary office with mental health and financial professionals to combine our perspectives and common values to help people with a variety of life problems.

My first position out of law school got me on the path to that dream. With Len Jacoby and the late Stephen Meyers, we opened the nation's first private legal clinic in a storefront on Van Nuys Blvd. Although it was not interdisciplinary, we offered an unbundled initial consultation for \$15 and attempted to expand legal access in a variety of ways.

After several years, I then played out the twin passions of teaching and working for social justice by serving as a law professor and director of clinical education at Mercer Law School in Macon, Georgia. Recruiting minority law students throughout the deep South and focusing on teaching students client counseling and law practice management, I continued to dream of the interdisciplinary law office of the future.

Accepting a position as Assistant Regional Director for Consumer Protection at the Federal Trade Commission, I learned about how professionals in the real estate field were thwarted in their efforts to unbundle the full-service package for home owners who wanted to sell their own property without

paying 6 percent for a broker's commission. This work led to my later work to expand legal services by offering limited-scope representation (again, another story for another time).

Returning to private practice, my dream of an interdisciplinary practice found its form in my storefront office in two ways. First, I dedicated myself to learning how to be a mediator, particularly a co-mediator with a therapist. Second, over the years, a number of mental health professionals took up residence in my office. We jointly and collaboratively worked with our clients from our different training and perspectives but with our shared value system of client empowerment, informed consent, and consumer approach to cost and service.

In my 2001 book, *Mediator Career Guide*, the opening words were:

"I have always been a dreamer.

"Some dreams come true. For over 45 years I have gotten up in the morning eager to get to the office. Every aspect of my work is consistent with my core life values and the strengths of my personality. The work is intellectually challenging and requires conceptual and strategic thinking. I help people, and what I do makes a difference to the people whom I touch and to many whom I will never see."

As my mediation practice with mental health teammates grew, in the early 1990s, I met Stu Webb who was a fellow traveler in a wandering band of innovative lawyer practitioners. Stu had found his passion in his invented model of Collaborative law as I had found mine in mediation. Through my discussions with Stu and Sue Hansen of Milwaukee, I realized that I could be a peacemaker representing one party through a supportive team even if I did not wear the mantle of mediator neutrality through this new and growing model of practice.

In the past 20 years, I have devoted myself to non-court practice. First, I gave up all litigation (yet another story for another time). Second, I balanced mediation with Collaborative practice and became part of an inspiring community of worldwide professionals.

In my 2009 book, *Collaborative Divorce Handbook*, I felt that other collaborative colleagues had an invaluable contribution to make in that publication. I contacted respected professionals from all fields and they lent their "Voices of the Collaborative Community," which enriched the book (see [https://www.dropbox.com/s/777qmrewqwts0ap/Web\\_1\\_VoicesFromCollaborativeCommunity.pdf?dl=0](https://www.dropbox.com/s/777qmrewqwts0ap/Web_1_VoicesFromCollaborativeCommunity.pdf?dl=0)).

This book, co-authored with rising star, Adam Cordover of Tampa, is an effort to put a larger spotlight on those voices. All of the chapters are written

by authors with vast experience in the trenches of Collaborative practices. This book truly belongs to our field. Adam and I are proud to have the opportunity to bring out these voices and amplify them through our joint opening and closing of this book.

There are several seminal compendiums on Collaborative practice. These books written by one voice are the foundation supplemented by our chapter authors. We do not pretend to cover all subjects in this book. Rather, our authors provide individual lenses from which the reader can reap lessons to improve the quality of their Collaborative work and hopefully permit you to increase your volume of Collaborative cases and profitability from this important work.

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# Introduction

Adam B. Cordover

Have you experienced the *call of the idealist*, when you take your first Collaborative training and all you want to do is collaborate? How about the *doubts of the naysayer*, when you become disappointed that you are not getting the amount of Collaborative cases that you were hoping for? I have experienced both, but they ultimately lead me to chart my own path and make peacemaking my day job. Here is my experience.

My call of the idealist came in the Summer of 2011. After 3 years as a family law litigator, including 1 year as a solo practitioner, I attended an introductory Collaborative law training conducted by Lone Star in Tampa, Florida. The idea of working with mental health and financial professionals was intriguing, and the prospect of engaging with fellow attorneys as teammates rather than adversaries was exhilarating!

Yet, the Collaborative work was slow to come. It took a year and a half after the training until I had my first Collaborative case. I truly enjoyed my first collaboration, although I did not have the opportunity to work on a second case until 8 months later. I was disappointed by my dearth of cases, but I also figured that I could not collaborate alone. My Collaborative caseload would not grow unless I was willing to take on the responsibility to help it grow.

I got involved in the leadership of my local practice group, Next Generation Divorce. I worked on the website committee to get a better internet presence and became membership director to recruit professionals with whom I could collaborate. I vice-chaired the training committee to make sure new and potential members could be properly trained and helped lead the effort with Judge Catherine Catlin to get an administrative order entered in my county's courts that recognized, promoted, and protected Collaborative family law practice. I, along with my friend and mentor Joryn Jenkins, took on

the first *pro bono* collaborative divorce in the State of Florida to (i) help a family in need, (ii) gain Collaborative experience, and (iii) get the word out about Collaborative practice via media coverage. I started a reduced rate program to make the Collaborative process more accessible, was selected to participate in the Inaugural Leadership Academy of the International Academy of Collaborative Professionals, and became co-chair of the Research Committee of the Florida Academy of Collaborative Professionals.

There was a prior same-sex divorce attempted, but mine was the first to challenge both DOMA and the constitutional amendment. In this case, I acted both as Collaborative divorce lawyer and as Collaborative appellate lawyer once the parties' joint request to dissolve their marriage and ratify their agreement was denied for lack of subject matter jurisdiction (the case went up to the Florida Supreme Court and was ultimately remanded with instructions to dissolve the marriage). Moreover, I was elected President of Next Generation Divorce, where I expanded the organization into two nearby counties and doubled its membership, growing it to become the largest local practice group in the United States.

Through this leadership and exposure, I engaged in more Collaborative cases, but it was still not enough to support a practice. I began to realize that I wanted to give up on the litigation that forced me to pit mother versus father, husband versus wife, but I got frustrated and the doubts of the inner naysayer set in. So, I took a baby step.

I made the decision that I did not have to take every single case that came through the door. This went against the philosophy that I had a few short years earlier when I was starting my firm: when someone offers to pay you, you gladly accept their money. However, I had been burned quite a few times accepting clients whose values, personalities, and expectations did not gel with my own, and they caused a lot of sleepless nights preparing for trial and oftentimes discounted billing or even complete nonpayment.

Thus, when I met potential clients with whom I did not feel I could build a rapport or who were interested only in making their spouse suffer, I simply told them that I was not the best attorney for them and provided other names. In the past, I would have just required a higher retainer and taken their case, but these were always the cases I regretted with clients who were the least grateful. With the decision not to take every case that came through the door, my quality of clients, quality of referrals from former clients, and quality of life increased.

After a while, I took another baby step away from high-conflict litigation. When a potential client came through the door with a history of lengthy litigation where the printout of docket entries went on for pages, I asked the potential client a simple question: "So, how has the litigation track been working for you?" Invariably, I would hear tales of misery. I told these potential clients that I would only accept the case if everyone agreed to abate the

proceedings and reach an out-of-court agreement, either through Collaborative law, mediation, or direct negotiations, and that I would be happy to reach out to the other spouse or attorney to find out whether this was a possibility. I found in doing this, the potential client was appreciative that I was willing to take them out of the exhaustion inherent in the adversarial court system and try something new. Sometimes, the other party and other attorney were receptive to the idea, and sometimes they were not (in which case, I would help my potential client find a litigation attorney). Either way, I found that I began getting quality referrals from those potential clients, regardless of whether I ultimately ended up taking their case.

I noticed something interesting in the psychology of potential clients when I became more selective in my cases. The more I set conditions on a client being able to retain me, the more the potential client wanted to retain me. Perhaps clients who had been enmeshed in litigation were impressed by the confidence with which I spoke about why I would only take their case outside of contested hearings, and the reasons made a lot of sense to them as they did not want to keep banging their head against the same wall. Or, maybe it made the clients feel like they were one of the select few, the smart ones, who finally wised up to the fact that the adversarial system simply was not made to address their families' needs. Possibly it was simple market economics: I reduced the supply of the services that I was willing to offer, and this created more demand.

Even so, I continued to take on plenty of low- to medium-conflict litigation cases, as this was the tried and tested way of practicing family law—and a known method to be able to support myself. Although I did not like being involved in these cases, I did not feel that I had the choice to give up litigation.

Then, through the International Academy of Collaborative Professionals, I met people who were no longer litigating. I got to know Nancy Cameron, who expressed her philosophy that practicing both litigation and collaborative was like riding two horses at one time: technically possible but very tricky. I met Brian Galbraith, Kevin Scudder, and Ron Ousky—three attorneys who were confident in their assertions that I did not need to be a litigator to have a family law practice (I thought they were crazy!). I also met Stu Webb, the original Collaborative attorney, who was one person that spawned a whole new practice area centered around not engaging in litigation.

Perhaps one of the people who made the biggest impression on me was Miami attorney Bob Merlin. Bob Merlin had been practicing, advocating for, and teaching others to engage in Collaborative practice almost since the process first came to Florida. Yet, he also had a thriving litigation practice which he had been building for 25 years. Bob told me a story that he went to a 2-day course taught by Forrest (Woody) Mosten in South Florida. However, for a good portion of the course, Bob had to run back to his office to deal with a highly litigious matter. This drove him crazy, as he had an amazing

opportunity to learn from a master peacemaker, and yet he was not able to take full advantage because of the litigation he had to handle. So, on the second day of the course, Bob stood up during the class and proclaimed, “I’m done. I am no longer going to accept litigation cases.”

This story left an impression with me and others in my community. When we had the opportunity to bring Woody to Tampa to teach his course on *How to Build A Profitable and Satisfying Collaborative and Mediation Practice* in February 2015, I made sure that I signed up early and cleared out my schedule so there would be no conflict. I was enthralled by the experience. Woody guided us to reflect on the work we were doing, laid out all of the nonlitigation work that we could do, and asked us a simple question: “Do you want to make peacemaking your day job?” I did. I did want to make peacemaking my day job.

I made my plan. I signed up for a 40-hour mediation course and learned how I could become certified as a Florida Supreme Court Family Law Mediator. I thought through the myriad of other services I could offer to replace litigation and how I would implement those services. I worked with a marketing company to completely revise my website and logo. I planned out with my assistant, Jennifer Gunnin, on how our internal and external policies and standard operating procedures would need to change. I began the paperwork so that my firm’s name reflected the direction and values of the attorney. With all of this planning in the works, I decided that I would no longer take new litigation cases beginning August 1, 2015—the fifth anniversary of the establishment of my law firm.

In late June 2015, however, I had an especially contentious trial where I “won” sole parental decision-making authority and 100 percent time-sharing (custody) for my client, but destroyed the possibility that my client and the other parent would ever have an effective co-parenting relationship. The client was happy with what he got, but the experience was so disconcerting that I decided I could not wait any longer. I could no longer take baby steps. So, on July 1, 2015, I took a big leap through the door of working exclusively in private dispute resolution. On that date, I stopped taking new litigation cases. Soon thereafter, on August 1, 2015, I changed my business name from “The Law Firm of Adam B. Cordover” to “Family Diplomacy: A Collaborative Law Firm.”

I have heard from many people who ended their litigation practice that they immediately saw an influx of new work and profitability. That was not my experience. Because I was a relatively young attorney without a large established referral base, a large percentage of my clientele had always come from my website. I generally had a good position on Google and other search engines because I blogged original content on a regular basis and was always tweaking my website. However, when I changed my firm’s name, I immediately switched to a new website without taking proper precautions.

The new website was beautiful, with a new internet address (FamilyDiplomacy.com), calming colors, beautiful scenic pictures, a new logo, better interactivity, and a smooth mobile interface. Yet, as it turned out, the abrupt manner in which I transitioned from the old website and domain to the new website and domain dropped my site from the first pages of search results and caused the amount of calls from potential clients to precipitously fall. Things became very tight.

The doubts of the naysayer, at times, came roaring back. I wondered if I had made a terrible mistake, and whether I would just have to accept the litigation work that made me miserable. Was I trying to practice family law in a manner for which there was no market?

On the positive side, this newly found free time gave me the opportunity to form new client bases. I took out members of my practice group (especially mental health and financial professionals) to lunch to get to know them better, find out how they might be able to serve my clients, and discuss how I could help their clients. I spoke more at local bar associations, therapy groups, and religious organizations to get the word out about the type of work that I did. I penned letters to the editor about Collaborative work in the Tampa Bay Times and other periodicals. I blogged almost daily on both my website and other sites (including my practice group, statewide and international Collaborative organizations, and general family law websites and forums) to improve my search engine optimization.

These efforts slowly paid off. I began showing up on the first page of Google search results for “Tampa Collaborative divorce lawyer” and other queries, and the phone began ringing off the hook from new sources of referrals. It took longer than I had hoped, but after 12 months, my nonlitigation revenues matched what I was making prior to the switch. In fact, during the course of working on this book, I found that my business was doing better than it ever did when I was still litigating. Better yet, I found myself engaged in four, then five, then six and seven Collaborative cases at a time, supplemented by my mediation, unbundled, name change, adoption, and gestational surrogacy cases. The amount of Collaborative work only increased from there.

Today, my day job is peacemaking—and it turns out that peacemaking has become a thriving growth industry.

Website: <http://FamilyDiplomacy.com/>