STATEMENT:

The Problem: Growing Interest in ADR, Lack of ADR Opportunities, and Affordability of Legal Services

Law students and young lawyers are increasingly interested in alternative dispute resolution (ADR).¹ Young lawyers often become interested in ADR practices while in law school, where ADR courses have multiplied over the years.² However, those serious about the field quickly discover there are few opportunities in ADR, especially at the entry level.³ This may also be true for collaborative law practice. Compounding the lack of opportunity in collaborative law are the training requirements in order to practice in the field. Some states require several years of experience before becoming a collaborative law practitioner.⁴ These requirements may deter recent graduates from entering the field.

Juxtaposed to these issues is the lack of affordability of legal services across the board. Despite one of the highest concentration of lawyers in the world, the United States fails to meet the legal needs of the poor.⁵ In 2005, an estimated 80% of the legal needs of the poor were unmet.⁶ Considering the need for legal services by the poor and the need for young lawyers to gain experience in the field, pairing the two could provide one way to satisfy the wants of both the poor and law students. This already occurs to some degree with law school clinics and intern programs with organizations like Legal

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⁶ Id.
Aid. However, the problem of achieving competent representation remains. If young lawyers are to provide collaborative law representation to the poor, collaborative law groups must ensure competent representation.

**Law School Education in Alternative Dispute Resolution**

Recent reports have stressed the need for practical lawyering skills in law school education, including negotiation and alternative dispute resolution. The MacCrate Report identified these skills as two of the top ten skills essential to lawyering. The FLER Report regarded expertise in alternative dispute resolution as a top skill necessary for the practice of family law. Many law schools are increasing their course selections in alternative dispute resolution. Should increased ADR coursework, including collaborative law, be taught in law schools? How do we encourage interest among students? Should we expose some, or all, students to ADR? What models of ADR education should be encouraged (e.g. clinics, classes, workshops)?

**Transition to Practice: Welcoming Recent Graduates into the Collaborative Law Community**

To ensure the growth and development of collaborative law, collaborative law groups need to think about how they can help young lawyers develop careers in the field by providing employment opportunities and training. It is important to train new lawyers in collaborative law before, or while, they are trained in litigation because of the mindset it requires. Becoming a collaborative lawyer after years of litigation work “requires rebuilding from the bottom up an entirely new set of attitudes, behaviours, and habits.”

Furthermore, collaborative law groups must assure that students and recent graduates have the basic legal skills necessary to practice in the field of collaborative law. These skills include negotiation, family law practice skills, and training in collaborative

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8 THE MACCRATE REPORT, supra note 7 at 138-40.

9 THE FLER REPORT, supra note 7 at 547.

10 Id. at n.23; Larry Cunningham, The Use of “Boot Camps” and Orientation Periods in Externships and Clinics: Lessons Learned from a Criminal Prosecution Clinic, 74 MISS. L.J. 983, 998 (2005); Mark J. Garcia, Key Trends in the Legal Profession, 71 FLA. BAR J. 16, 22 (1997).

11 The FLER Report recommends coursework in “mediation, mediation advocacy, collaborative law, cooperative law, and advanced techniques in negotiation.” The FLER REPORT, supra note 7 at 525.

12 Even though the orientation of many law schools is changing, legal education still largely exhibits a “tendency to emphasize adversarial training.” Kathy A. Bryan, Why Should Businesses Hire Settlement Counsel?, 2008 J. DISP. RESOL. 195, 201. Collaborative law groups may thus have to supply the appropriate training until the law schools catch up.

law. To accomplish this transition, most law firms use the associate model (called “traineeships” in other common law countries). Collaborative law firms can also offer associate positions. If there are no firms offering such positions, collaborative law groups could start a mentorship program and grant young lawyers a “junior” or “associate” membership status. Finally, ongoing collaborative training should be recommended for all collaborative lawyers. New lawyers could be required to complete the training recommended by the International Academy of Collaborative Professionals (IACP) outlined below.

**Transition Models**

Looking at other transition models could also help in formulating an answer to this question. The following represent some current models in use:

- Government Entry-Level Programs – entry-level programs which include extra training and supervision that may or may not lead to later employment (e.g. Department of Justice Attorney General Honors Program, Presidential Management Fellows Program);
- Fellowships – one or two year positions, usually at non-profit organizations, focusing on certain projects or areas of the law;
- Internships
- Externships – an internship for credit while in law school;
- Legal Traineeships – British model whereby young lawyers must complete two-years at a law firms (in which they may rotate departments) after completing law school;
- Mentorships – some collaborative law groups require a mentor/mentee relationship for their student members;
- IACP administrator-associate-- a new model the IACP is studying which includes law school coursework and an externship with a collaborative law group.

**Collaborative Law Qualification Models**

The largest group of collaborative professionals, the International Academy of Collaborative Professionals (IACP), has issued its minimum standards for collaborative...
lawyer practitioners.¹⁸ These standards include membership in good standing in the lawyer’s jurisdiction, twelve hours of basic collaborative law training, a $135 fee, a 30-hour facilitative conflict resolution training, and fifteen hours of training in various related areas.¹⁹

Within the United States, qualifications to practice as a member of a collaborative law group vary widely among states, from those with extremely strict requirements like New York (good standing within bar, $1000 annual dues, liability insurance, five years of matrimonial experience, 38 hours of training, attendance at seven meetings annually, and at least four hours of continual annual training),²⁰ to those with more lenient requirements like Minnesota (licensure and good standing, IACP membership, $240 annual dues, liability insurance, attendance at four activities and six hours of training in collaborative law annually, and striving to participate in at least one collaborative law case per year).²¹ Minnesota also offers a student membership, which only requires good standing within the student’s educational institution, a concentration in law, and sponsorship by an active CLI member.²²

Collaborative groups with requirements falling in-between those mentioned above include the Cincinnati Academy of Collaborative Professionals (CP Cincinnati) and the Colorado Collaborative Professionals (CCLP), both of which require licensure and good standing within the bar, liability insurance, fees of $150 and $125 respectively, and at least three years of active representation with a concentration in family law.²³ Colorado additionally requires at least one year of family law practice, IACP membership, level one training, five hours of collaborative training, and attendance at three meetings.²⁴ Colorado has an intern membership which requires being a student in a collaborative law field, IACP membership, and $50 annual dues.²⁵ Attorney membership in these two jurisdictions requires only three years of law practice, as opposed to New York’s five years and Minnesota’s lack of a practice requirement.

If the goal is to encourage a growth of competent collaborative law professionals to what is a growing phenomenon, the methods for achieving this goal vary widely between collaborative law groups. Why should there be such disparate treatment?

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¹⁹ Id.
²⁰ NYACP REQUIREMENTS, supra note 4. Different membership requirements apply for financial and mental health professionals.
²¹ CLI - MINNESOTA, supra note 15. Minnesota membership requirements also apply to financial, mental health, and facilitative professionals.
²² Id.
²³ CINCINNATI ACP REQUIREMENTS, supra note 4; CCLP REQUIREMENTS, supra note 4. Cincinnati has memberships for financial and mental health professionals; Colorado has membership for interns and affiliates.
²⁴ CCLP REQUIREMENTS, supra note 4.
²⁵ Id.
Conclusion

There are several tensions currently facing legal education in collaborative law. While interest in the field is growing among young lawyers, opportunities in the field are not. One solution could be to have young lawyers gain experience on a pro bono level while still complying with ethical standards of competent representation. There is also a tension between the need to start early training in collaborative law so that a possibly inimical litigation mindset does not set in, and the need to ensure sufficient experience in collaborative law to ensure competency within a growing field. Requiring several years of traditional family law practice may disadvantage entry into the field and damage the collaborative law community as a whole by only allowing entrants ingrained in the traditional mentality of litigators.

The legal community should think about ways to address and balance these problems. Law schools can offer courses and clinics. Even more, law schools could shift the dominant educational paradigm to one featuring the lawyer as problem-solver. Such a significant transition might require a basic re-conceptualization of the mission of a law school. Collaborative law groups can offer mentorships and provide training and employment opportunities. They should also think about promoting more client demand for collaborative services. These suggestions would ensure that the next generation of lawyers will continue to advance collaborative law as a model for legal practice in the future.

The goals of this session are to discuss:

- whether ADR and collaborative law should be taught by law schools and, if so, the best means of doing so;
- ways to encourage early exposure to and training in collaborative law;
- key requirements for student and recent graduate membership for collaborative law practice; and
- ways to implement these changes.

Key questions for the group:

1. Should law students receive training in ADR and collaborative law? If so, how (integration in coursework, workshops, courses, clinics)?

2. How much and what kind of training should collaborative law groups require of entering collaborative law professionals? How can young professionals receive training in collaborative law while meeting certain minimum experience requirements? Should this training include junior membership, mentorships, or pro bono services to the indigent?
3. Should training or education take account of the growth of collaborative law in other fields? If so, how?

4. How can law schools and/or collaborative law groups be encouraged to implement these suggestions?

For further reading:
