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# The Family Law Bar, the Interdisciplinary Resource Center for Separating and Divorcing Parents, and the "Spark to Kindle the White Flame of Progress"

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# THE FAMILY LAW BAR, THE INTERDISCIPLINARY RESOURCE CENTER FOR SEPARATING AND DIVORCING PARENTS, AND THE “SPARK TO KINDLE THE WHITE FLAME OF PROGRESS”

Andrew Schepard, Marsha Kline Pruett, and Rebecca Love Kourlis

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The Interdisciplinary Resource Center for Separating and Divorcing Families at the University of Denver described in the *Honoring Families Initiative's* Family Law Bar Report provides a suite of holistic services tailored to the individual needs of families with children. Services provided include assessment and service planning, legal education, dispute resolution (mediation), agreement and order drafting, therapeutic services, and financial planning. As established by a rigorous empirical evaluation, parents and children appreciate and benefit from these coordinated, holistic services. The Center experience gives evidence of the value of interdisciplinary collaboration. It is our hope that the Family Law Bar will be inspired to promote the development of Centers throughout the country and promote changes in legal regulation and education to facilitate interdisciplinary collaborations for the benefit of separating and divorcing families.

Key Points for the Family Court Community:

- The Resource Center experience establishes that holistic problem-solving-focused services provided by interdisciplinary teams that include lawyers benefit separating and divorcing parents and children.
- The traditional model of delivering legal services to parents in separation and divorce requires each to be represented by his/her own lawyer. That model is not economically viable for many families. Center parents, in contrast, receive legal information from a single source—Center mediators and legal educators. The positive impact of Center services suggests that the traditional model is not optimal in many cases and regulatory changes should be made to give parents an option to use just one lawyer, with informed consent.
- The Family Law Bar can use the Center experience as inspiration to collaborate with other professions to develop innovative multidisciplinary service delivery models for parents and children in separating and divorcing families and to re-examine regulatory barriers to interdisciplinary collaboration.

**Keywords:** *Family Lawyers; Holistic Services; Interdisciplinary Collaboration; Interdisciplinary Services; Mediation; and Regulatory Reform.*

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## INTRODUCTION: A CALL FOR INTERDISCIPLINARY COLLABORATION

The centerpiece of this Special Issue of *Family Court Review* is a report prepared by the Institute for the Advancement of the American Legal System's (IAALS)<sup>1</sup> Honoring Families initiative (HFI)—with which we are all affiliated<sup>2</sup>—titled *The Family Law Bar: Stewards of the System, Leaders of Change*.<sup>3</sup> The report arises from a two-day Summit in November 2015 of national leaders of the family bar, brought together to “identify obstacles to serving children and families in separation and divorce matters, and explore opportunities for meaningful change.”<sup>4</sup>

The HFI Report summarizes the Summit discussion of an interdisciplinary Center for Out-of-Court Divorce (COCD), which began as the Resource Center for Separating and Divorcing Families on the University of Denver (DU) campus and offers families a suite of holistic “services, tailored to that family's specific needs, circumstances and budget.”<sup>5</sup> Summit participants considered and discussed this visionary model, “expressing broad appreciation for the benefits [it provided to] separating and divorcing families.”<sup>6</sup>

We have been heavily involved in the creation and evaluation of the COCD and are delighted that bar leaders recognized its potential significance. One purpose of this article is to provide readers with

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more background information about the COCD's "holistic approach" and how it benefits families with children.

More broadly, the purpose of this article is to encourage the Family Law Bar to collaborate proactively with other professions for the benefit of separating and divorcing families. Centers could be established in every community with the participation and support of the Family Law Bar. The Family Law Bar should also systematically reexamine regulatory rules like the one which requires each separating and divorcing parent to be represented by his/her own lawyer. This rule raises the cost of legal representation and may provoke additional acrimony between parents and delay in their conflict resolution. Other rules inhibit the development of interdisciplinary collaborations in service delivery, the clear wave across professions and public sectors. Changes in the regulatory framework will benefit the Family Law Bar's clients and increase access to justice. Changes in family law education that emphasize interdisciplinary collaboration and problem solving will ultimately benefit the families and children that future lawyers will serve.

This article will first describe the prototype Resource Center for Separating and Divorcing Families, which evolved into the COCD, discussed at the Summit and in the HFI Report. We then describe positive outcomes for families demonstrated by the empirical evaluation of the COCD's first two years of operation. Next, we describe how the themes of the HFI Report, articulated by Family Law Bar leaders, are confirmed by client experience at the COCD. We conclude by identifying action items the Family Law Bar can take away from the HFI Report and from the COCD experience. We focus especially on what the Family Law Bar can do to promote the development of similar centers that foster interdisciplinary collaboration.

## THE COCD

On September 3, 2013, the unique interdisciplinary Resource Center for Separating and Divorcing Families opened on the University of Denver campus. The model for the Resource Center was developed by the IAALS HFI as part of its efforts to identify needed changes in the divorce and separation and parental responsibility processes to improve outcomes for families.

The COCD was designed as a hub for training law students, social work students, and psychology students in interdisciplinary family law practice and for research and advancement in the delivery of separation- and divorce-related services. As a campus-based center, it served parents and families of all income levels and created a sliding-scale fee system based on the 2012–2013 Federal Poverty Guidelines.

The Resource Center was a joint project of the Sturm College of Law, the Graduate School of Professional Psychology, and the Graduate School of Social Work at the University of Denver. Its planning and development were guided by multidisciplinary consultants and a multidisciplinary advisory board, as well as an on-campus steering committee that helped navigate the Resource Center's compliance with university policies. Major stakeholders (including the judiciary, the divorce bar, the alternative dispute resolution community, domestic violence advocates, and legal services lawyers) were consulted during the development of the COCD. It operated successfully for two years on campus, and we summarize the noteworthy evaluation data gathered during that period. We also describe the current operating model for the COCD, which evolved from the on-campus Resource Center as a community-based alternative.

The COCD offers married and unmarried parents a range of services provided by students who are closely supervised by qualified professionals, all of whom work as an interdisciplinary team. The services include:

- Legal education and dispute resolution: mediation, drafting, and education on the legal process, including help completing necessary forms and filing them with the court;
- Therapeutic: child interviewing, co-parenting coaching, adult individual and group counseling, child individual and group counseling, transition support group, and discernment therapy; and
- Financial: education, assessment, planning, and financial mediation.

The range of services offered to families at the COCD is based on the premise that divorce and separation are more than a legal event. Rather, they are a major life transition that places significant stress on all emotional, economic, and educational aspects of family life for parents and children alike.<sup>7</sup>

The COCD's goal is to help separating and divorcing families reorganize, much like bankruptcy's goal is to help a business reorganize and emerge as a functioning entity. The focus of COCD services is planning for the family's future. Members of a reorganized family have continuing relationships regardless of their change in legal status. The COCD's goal is to maximize family functioning—especially parent-child functioning—as a reorganized unit.

The COCD's multidisciplinary services are provided by a single institution in a single location operating with a coordinated plan for each family—in effect, one-stop shopping for separation and divorce planning and support. Parents certainly need access to information about the laws and court system that regulate the family reorganization process. They also need legally oriented agreement drafting services and filing of official documents with the court system. But, they also need access to other professionals to help the family cope with the challenges that reorganization presents. Parents may need financial planning and mental health support to adjust to the transitions that separation and divorce require, adjustments ultimately described in a separation agreement filed with the court that describes their parental rights and responsibilities. Their children might need assessment and therapy in addition to, or as part of, a parenting plan. Center personnel—lawyers, mediators, therapists, and financial planners—have to work together as an interdisciplinary team to address family challenges holistically.

Each family has an individual service plan. Not all families need or want each service the COCD has available. The process of fitting families to useful services begins with intake interviews, followed by a joint legal/mental health team assessment that results in service recommendations to the parents. The parents then make the decision about which parts of the recommended service plan they will engage in, which the COCD staff then coordinates and delivers.

The assessment and intake process is also designed to identify parents who are appropriate for COCD services—those who value the importance of putting their children's needs first and have a basic capacity to plan collaboratively for the future. Parents are accepted as a co-parenting team, rather than as individuals, for COCD participation. They are referred elsewhere if either or both parents have:

- No interest in collaborating or cooperating with a service plan;
- Extensive mental health issues;
- Serious substance use;
- A history of domestic violence or child abuse or neglect; or
- A lengthy history of parental litigation.

Furthermore, the COCD has a partnership with the Colorado district courts, which facilitates filing of documents and entry of final orders after mediation. The model was designed so that families can enter COCD services before or even shortly after filing a complaint for dissolution of marriage or for a parenting dispute. The court is notified that the case is pending at the COCD and the case is assigned to the senior judge affiliated with the COCD.

The end of the COCD's process is an even more significant collaboration with the court system. After COCD staff prepare a mediated agreement, Colorado Senior Judge Robert Hyatt holds a hearing at the COCD, reads the agreement into the court record, and compliments the parents on their focus on the best interests of their children by utilizing the COCD process. This is, to our knowledge, the first time in American history that a required judicial hearing approving the final divorce of a couple is held outside of a courthouse. The parents thus receive a fitting tribute from the judicial system for behaving in a socially responsible way. They express appreciation for the collaborative tone and supportive stance maintained by all COCD-involved staff throughout the process. One of the first families to complete the COCD process even left the divorce decree meeting to go to lunch together, to continue to plan their future as divorced parents.

The COCD on the DU campus was heavily supported by funds raised from outside sources. The on-campus COCD provided effective services to families and education for students but was not financially sustainable without continuing significant subsidy. A heavily subsidized model of a Resource Center would be difficult—if not impossible—to replicate in other communities.

In an effort to make the COCD financially viable, it has recently evolved into a nonprofit community-based model with the same core values and services. The campus-based Resource Center has been renamed the COCD and moved off campus. The interdisciplinary services are currently provided by professionals, not students under supervision, although externs remain part of the service delivery model.

The community-based COCD has created package pricing for services ranging from \$1,500 to \$4,500, customized for families' needs and interests. The goal of this model is to make the COCD financially self-sustaining while still offering generous financial scholarships to families who need them.<sup>8</sup>

The \$1,500 package is for couples with children in which one or both parents are not yet ready to proceed with divorce and may need more time, education, or counseling to determine a path forward. Services may include:

- Discernment therapy (helping the parents figure out if they are ready to move forward with separation);
- Divorce therapy;
- Adult individual counseling; and
- Financial and legal education.

The COCD's more comprehensive transition support program costing \$4,500 is for couples with children who are ready to develop plans for their family's transition. Services may include:

- Family counseling;
- Divorce counseling;
- Individual adult and child counseling;
- Co-parent planning and preparation;
- Financial education and budget planning;
- Legal education;
- Divorce mediation, including parenting plan mediation and financial agreement mediation;
- Legal document drafting; and
- Divorce support groups for parents and children.

## EVALUATION OF IMPACT ON FAMILIES

IAALS built a systematic evaluation into the plan for the COCD from the outset.<sup>9</sup> It took place while the COCD was located on the DU campus, when the service providers were law, psychology, and social work graduate students functioning with training and supervision from professionals.

In total, eighty-two families, comprising 164 parents and 160 children, utilized COCD services during its first two years of operation. The evaluation of these families' experiences at the COCD was derived from multiple data sources: parents, staff, center leadership and community partners. The longitudinal evaluation was conducted before, during, and after service delivery. It included information from questionnaires, focus groups, and individual interviews. The result was a comprehensive evaluation report that can only be briefly summarized here.

The parents who participated in COCD services are:

- Largely educated;
- Primarily lower middle to middle class, though there is an economic spread;
- Employed full-time, though thirteen percent are unemployed;
- Racially and religiously diverse, with twenty-nine percent being people of color.

Although they were a relatively high-functioning group (low to moderate in parental mental health problems and conflict), COCD parents were vulnerable as a result of the divorce. About one third of parents were depressed half or more of the time, and roughly twenty to twenty-five percent of parents had domestic violence concerns.

Parents overwhelmingly said they used the COCD because they felt that their concerns would be heard and their children would be supported through family reorganization. They came to work out financial issues, obtain information about the divorce and separation process, work on parenting schedules, reduce their conflict, improve their communication, and facilitate a smooth family transition for their children.

Parents who participated in COCD services showed statistically significant:

- Decreases in parental depression, anxiety, and stress;
- Decreases in levels of acrimony between the parents;
- Increases in co-parenting decision-making skills;
- Improvements in parental communication skills (increased collaborative style and decreased violent style);
- Increases in the degree of confidence in their ability to co-parent;
- Decreases in their levels of parenting stress (parental distress, parent–child dysfunctional relationships, and perceptions of children as difficult);
- Increases in appropriate parental emotional expectations of children; and
- Decreases in their perceptions of their child’s social isolation (no other child behaviors changed significantly).

Overall, parents rated the impact of the COCD on themselves, their children, and their family as shown in Table 1.<sup>10</sup>

**Table 1**  
Parental Assessment of Overall Impact of COCD Services

	<i>Good</i>	<i>Neutral</i>	<i>Bad</i>
Child(ren)	81.7%	16.7%	1.7%
Self	85.2%	11.5%	3.3%
Family	86.7%	10.0%	3.3%

The highest ratings parents gave were based on their perceptions that participation at the COCD:

- Kept their children’s interests protected,
- Maintained concern for their children, and
- Resulted in fewer co-parenting problems.

Parents also appreciated the speed and efficiency of the process:

- The average time spent to divorce was about five months overall (including involvement in services), with about four months spent resolving the legal conflicts.
- On average, parents spent two and a half hours working on their legal case and an hour and forty-five minutes in front of a judge.

## EVALUATION OF IMPACT ON STUDENT LEARNING

Recall that the high level of participant well-being and satisfaction with COCD services was attributable to work by teams of supervised law and mental health students. The families, of

course, consented to work with students. The law students functioned much like students in a traditional law school clinic except that they did not provide traditional legal representation—only mediation, legal education, and drafting. All students worked as part of an interdisciplinary team in implementing a service plan designed for each family. The evaluation showed that families endorsed the view that the law students (and the other students) delivered high-quality services to parents.

The evaluation of the COCD also included evaluation of student learning, overall summarized as follows:

RCSDF (Resource Center for Separating and Divorcing Families) interns—graduate students in law, psychology, and social work—showed increased knowledge in relevant substantive areas, such as divorce law, parenting plans, counseling, and family dynamics. Student interns also reported increased levels of comfort in accomplishing professional tasks, including problem solving, negotiating agreements, and drafting field-appropriate professional documents. Positive feedback from student interns related to the advantages in working with an interdisciplinary team and real-world experience working with families.<sup>11</sup>

The students and supervisors of the COCD described their experiences in a previous *Family Court Review* article, which confirms in a more subjective way the important educational value for professionals who aspire to serve families of being trained as part of an interdisciplinary team.<sup>12</sup>

## IMPLICATIONS OF THE COCD EXPERIENCE FOR THE FUTURE PRACTICE OF FAMILY LAW

COCD experience supports the major themes articulated by Family Law Bar leaders in the HFI Report from a client and family perspective.

### **THEME 1: MANY PARENTS WANT AND BENEFIT FROM A MODEL OF LEGAL SERVICE DELIVERY THAT EMPHASIZES PROBLEM SOLVING AND WHAT UNITES—RATHER THAN DIVIDES—THEM**

The HFI Report states that the Family Law Bar should “[r]ecalibrate our understanding of advocacy to emphasize problem solving, teaching, and counseling.”<sup>13</sup> Rather than assuming the parties will be positioned as adversaries, the recommendation suggests that lawyers and the system should help the parties work together. The COCD model is a clear example of one way to implement that recommendation, and the data support the idea that a recalibration toward problem solving will serve the best interests of many parents and children.

We have traditionally thought of access to lawyers in separations and divorces as we do in criminal cases and other kinds of civil cases; in essence, we believe that justice requires that each parent be represented by his/her own lawyer. Furthermore, conflict of interest rules that govern the legal profession generally provide that a single lawyer may not represent both parties in a dissolution or separation proceeding.<sup>14</sup>

Underlying these assumptions and rules is the premise that the parents are adverse to each other because they are separating and divorcing and their goals are incompatible. Each parent’s lawyer is expected to offer advice and counsel based on a client’s individual goals and, if necessary, zealous courtroom advocacy to advance those goals.

COCD experience confirms that each separating and divorcing family is a unique collection of people with individual needs and aspirations. They are not all intractably conflicted and, if given an alternative that allows them to resolve their differences amicably, with their children’s needs at the center of the process, many families will both participate and ultimately benefit.

COCD experience suggests that many parents are willing to make responsible sacrifices and compromises of their individual goals and desires in the best interests of their children, particularly when they are supported in doing so by empathic staff who provide and coordinate professional services.



These parents understand that they have profound joint interests in minimizing the negative effects of hostility on their children, maximizing their financial resources to cover the increased costs of family reorganization, and minimizing the economic and emotional transaction costs associated with the legal process. They want help developing a plan to deal with the problems they foresee, not prolonged adversarial negotiation and trials that drive them and their children further apart. Coordinated tools—mediation, education, therapy, and financial planning—help parents build a postseparation and divorce life for their children that reduces the risk of ongoing conflict, uncertainty, and expense that an adversarial emphasis in legal representation can create.

**THEME 2: SEPARATING AND DIVORCING PARENTS CAN EFFECTIVELY GET LEGAL INFORMATION FROM ONE NEUTRAL SOURCE RATHER THAN TWO LAWYERS, ONE FOR EACH SPOUSE**

The HFI Report notes that “the services that family law attorneys provide are evolving . . . and new practice models are emerging that are centered on innovative fee structures and new methods of legal services delivery.”<sup>15</sup>

COCD clients did not use the traditional representation model. Instead of two lawyers, they generally received legal information from a single source: COCD mediators and legal educators. Mediation proved to be a perfect procedural vehicle for COCD parents. The lawyer-mediator provides legal education and information to both parents and facilitates resolution of their dispute.

Either of the parents could choose to be represented by counsel on an unbundled basis. Parents also could bring their own attorneys to mediation if they wished. Although there is nothing about the model that precludes it, few of the clients at the Resource Center took that approach. Indeed, in the COCD, more clients are using unbundled services to review their mediation agreement before signing it.

The cost of the traditional two-lawyer model puts legal services out of reach for many separating and divorcing parents, and the need to pay two lawyers is a barrier for many parents to hiring lawyers at all. The poor are not represented because of limited legal aid budgets.

More recently, middle-class separating and divorcing couples—who receive no legal aid—also have been priced out of the market for legal services. For example, a recent IAALS study of self-represented litigants found that out of 117 respondents, 43.4% reported an annual individual income of under \$20,000; 27% reported an annual individual income of between \$20,000 and \$40,000; and 15.6% reported an annual individual income of between \$40,000 and \$60,000.<sup>16</sup>

This research, and similar research in Canada,<sup>17</sup> belies the myth that self-represented parents are limited to the very poor, although they are a significant proportion. Rather, self-represented litigants are economically representative of the general population. In other words, many litigants have chosen to be self-represented because they made a decision that they could not afford legal services as compared to paying for child-related expenses, medical care, rent, and other household costs.<sup>18</sup>

Research also suggests that most self-represented parents want the knowledge, comfort, and support of a lawyer, but simply cannot afford it. In the recent IAALS study of self-represented litigants mentioned above, just over ninety percent of all participants indicated that financial issues were influential—if not determinative—in the decision to self-represent; financial issues were the most consistently referenced motivation for proceeding without an attorney.<sup>19</sup> A comparatively small percentage of self-represented litigants turn away from representation because of concern that the adversarial system does not serve families well. Just under one-quarter of self-represented litigant participants expressed a preference to handle the matter without an attorney—that is, they felt as if they wanted to represent themselves, regardless of whether they felt they could.<sup>20</sup>

Although the traditional model of representation is built around the expectation that both parties will have counsel, the legal system is experiencing a vast increase in self-represented litigants in separation and divorce. Exact statistics are hard to come by and vary from state to state, but there is no doubt that self-represented parents are a majority of the litigants in many of our family courts. The HFI Report cites statistics from Maryland and California which indicate that approximately seventy



percent of domestic relations cases in those states had at least one party without a lawyer. In many cases (in some states about forty percent), neither party is represented.<sup>21</sup>

The HFI Report notes a debate among Summit participants about whether one lawyer should be allowed to advise both parties in a family law case with appropriate informed consent: “Some participants touted this joint counsel arrangement as a cost-effective and time-saving means through which to facilitate agreements between amicable parties . . . some attendees had concerns with this proposition.”<sup>22</sup>

The COCD model reduces the costs of providing legally related services to parents by having a single service provider. Its success raises a question that underlies many models of legal reform: given its costs in money and the potential for inflaming conflict, what is the value added of requiring that two lawyers be involved in the separation and divorce process? To us, it is hard to justify requiring each parent to have a lawyer when: research suggests that neither can afford one; many parents do not want to engage in adversarial bargaining but do want legal information and advice; and effective models for delivery of legal services, including mediation, that do not require two lawyers, exist with which clients are satisfied.

One possible response to this analysis is that the neutral source of information model is not appropriate in all situations and we should not conclude from the COCD experience that the traditional model of lawyering in separation and divorce should be abandoned entirely. There are situations, particularly when parents have to go to court to adjudicate contested claims based on legal rights, in which each parent should have his/her own lawyer for counseling and advocacy. Assessment, establishment, and enforcement of legal rights may require procedures consistent with due process which, in turn, require a lawyer to advocate on behalf of individual parents’ interests. Both parents should be represented, for example, if one parent seeks an order of protection because of domestic violence or if one parent suspects the other of fraud in hiding assets. Indeed, if the fact-finding, protection or enforcement functions of the court are implicated, traditional models may well be the best option available to parties.

The COCD experience, though, supports the view that legal ethics rules should allow for single representation with informed client consent. COCD clients are very satisfied with the “one neutral source” model for delivery of legal information and mediation. The humanistic psychologist Abraham Maslow noted that, “[i]f your only tool is a hammer, every problem looks like a nail.”<sup>23</sup> Current ethics rules are based on the premise that our only tool should be separate representation because we assume, inaccurately, that all separating and divorcing parties are in ongoing irreconcilable conflict. Consumers should have more options. Other tools for providing legally oriented services, such as mediation and joint representation by a single lawyer, should be available to the diverse population of divorcing and separating parents. The cases raising due process concerns that warrant hiring two lawyers, one for each side, may be relatively atypical—not the rule. We should be able to help parents distinguish situations that recommend, or even require, that each parent be represented from those where a single source of legal services is appropriate, as we do in most other legal potential conflict-of-interest situations.

### **THEME 3: SEPARATING AND DIVORCING PARENTS BENEFIT FROM COORDINATED INTERDISCIPLINARY SERVICES TO FACILITATE REORGANIZATION OF THEIR FAMILIES**

The HFI Report emphasizes the importance of “authorization of multidisciplinary practice models, within which a family law attorney could work collaboratively with professionals in other disciplines in order to provide the holistic services from which many family law clients would benefit.”<sup>24</sup> It also emphasizes the importance of family law attorneys learning what has traditionally been thought of as nonlegal knowledge such as the long-term impact of parental conflict on children and “client-centric education” in listening skills.<sup>25</sup>

The COCD experience confirms the importance of interdisciplinary collaboration between attorneys and other professions to serve the needs of parents and children in separating and divorcing families. As previously discussed, the COCD was created on the premise that separation and divorce is not just a legal problem but a challenge to the family’s economic and emotional well-being. COCD families would thus benefit from a coordinated multidisciplinary service plan to address their needs holistically.<sup>26</sup>

COCD experience confirmed this premise. For example, a number of COCD clients benefited from financial planning to manage the pressures of setting up two households. Their children needed

a mental health assessment and support to deal with their acting-out and educational difficulties in reaction to parental conflict. Parents consistently chose to have their children interviewed so that the children could express their own needs and have a voice in the legal process. The parents themselves in some cases requested mental health therapy for depression. Given that parents and children have great needs and limited resources during the transition of separation and divorce, the more coordinated and efficient services can be delivered, the better. When services are delivered in one location, and when the involved professionals talk to each other, the family benefits.

#### **THEME 4: LAW STUDENTS CAN BE EDUCATED TO BE PROBLEM-SOLVING COLLABORATORS, ESPECIALLY THROUGH CLINICAL EXPERIENCES**

The HFI Report recommends that “[l]aw school curricula for students pursuing family law practice should be specialized in recognition of the different and interdisciplinary skill set that a family law attorney must possess.”<sup>27</sup> Citing the recommendations of IAALS’ *Educating Tomorrow’s Lawyers Initiative*<sup>28</sup> and the Family Law Education Reform Project,<sup>29</sup> the HFI Report strongly recommends clinical and experiential education to prepare new family lawyers to better serve their clients and their children. The COCD experience shows that these recommendations are on target. Law students who worked at the COCD learned family law representation in a whole new way. The law students were able contributors to an interdisciplinary team and provided outstanding service to their clients.

### **THE FUTURE**

The HFI Report states:

As stewards of the family justice system, family law attorneys have an inherent and ongoing responsibility to participate in creating meaningful systems change. Bar associations must play a role in mobilizing members, and individual attorneys have a duty to energize others in pursuit of the goal of reshaping separation and divorce processes to serve families and children in the best manner possible.<sup>30</sup>

The question is: how does the Family Law Bar fill these responsibilities and duties to participate in meaningful system change? And where does the COCD experience fit into those goals? In the words of the HFI Report, the COCD has proved itself to be a model for “serv[ing] families and children in the best manner possible.”<sup>31</sup> Indeed, this is why the American Bar Association’s Dispute Resolution Section awarded the COCD its 2015 Lawyer as Problem Solver Award.

Now what? How can the Family Law Bar support the continuing development of interdisciplinary centers? If we put our faith in the bar and expect that a substantial number of attorneys will support change efforts, then several ideas—some of which are described in the HFI Report—come to mind about how they can accomplish this change in mindset and practice.

#### **SUPPORT INTERDISCIPLINARY COLLABORATION IN RESPONDING TO THE NEEDS OF SEPARATING AND DIVORCING FAMILIES**

The HFI Report states: “[f]amily law attorneys do not operate in isolation. In order to effectively serve clients, a family law practitioner must work collaboratively with other professionals from mental health (therapists, drug and alcohol counselors, etc.), financial (accountants and financial planners), and related fields of practice.”<sup>32</sup>

In essence, (and with apologies to John Donne),<sup>33</sup> COCD experience strongly supports the view that no profession is an island in serving the needs of separating and divorcing families. Lawyers and judges worked collaboratively with mental health professionals, financial planners, mediators, and court administrators in the development and implementation of the COCD. The results were beneficial for parents

and children. Quite simply, lawyers could not have done as well for parents and children on their own. Neither could any of the other professionals involved in working with COCD families.

The COCD experience supports the call of the HFI Report to put the authorization of interdisciplinary practice models on the reform agenda.<sup>34</sup> The bar should also develop ways to consult with the leaders of other professions who work with families and children on a regular basis both nationally and in local communities. Each center project could, for example, be guided by a multidisciplinary board like the one guiding the COCD. That is a wonderful forum for the professions to talk with each other in an atmosphere focused on how they can work together for the benefit of families.

#### **SUPPORT THE CREATION OF CENTERS IN DIVERSE COMMUNITIES**

In Australia, publicly funded but privately operated Family Relationship Centres offer families low- or no-cost access to mediation and education nationwide.<sup>35</sup> Established in 2006, these centers are associated with a reduction in family court filings by thirty-two percent and fewer matters in court involving disputes over children. Furthermore, ninety-five percent of clients are satisfied with the process and agreements reached at the centers are lasting.<sup>36</sup>

The Family Law Bar can endorse the center concept and establish a goal of creating centers in every community. Lawyers can serve on governing boards and lobby appropriate bodies for necessary regulatory reform and financial support.

#### **REFER POTENTIAL CLIENTS TO THE CENTER IN THE BEST INTERESTS OF THEIR CHILDREN**

The HFI Report states that the Summit participants reached a consensus that “calling attention to client behaviors and goals that may be harmful to child(ren) is merely an extension of representing the client’s best interests.”<sup>37</sup> Prolonged parental conflict may be harmful to children. The Family Law Bar should assume a duty to refer parents to services like those provided at the COCD, which are available at reasonable cost, and which reduce the risk of harm to children from prolonged parental conflict. One of us has argued elsewhere that a divorce lawyer should have an ethical duty to refer parents to alternative dispute resolution processes.<sup>38</sup> The American Academy of Matrimonial Lawyers *Bounds of Advocacy*—an aspirational code of ethics for divorce lawyers—provides that “[a]n attorney should attempt to resolve matrimonial disputes by agreement and should consider alternative means of achieving resolution.”<sup>39</sup> Some states have enacted provisions of their lawyers’ ethics codes along those lines.<sup>40</sup> Referrals to a center in a local community should become a primary way of fulfilling that duty and part of best practices in legal representation.

#### **ENGAGE IN PUBLIC EDUCATION ABOUT THE IMPORTANCE OF REDUCING FAMILY CONFLICT FOR THE BENEFIT OF THE CHILDREN, AND ENCOURAGE PARENTS TO PARTICIPATE IN THE CENTER AS A PART THEREOF**

The HFI Report emphasizes the importance of family lawyers engaging in a public education campaign about what family courts can and cannot do: “Emphasizing the alternatives to litigation [like the Center] . . . is a vital component of a public education effort . . . . The Family Law Bar shares a responsibility with family courts for taking a leadership role in facilitating and increasing public education efforts.”<sup>41</sup>

#### **HELP EDUCATE THE NEXT GENERATION OF FAMILY LAWYERS ABOUT THE IMPORTANCE OF CENTERS, INTERDISCIPLINARY PROCESSES, AND ALTERNATIVE DISPUTE RESOLUTION**

Meetings with family law professors and deans of local law schools should be occasions to encourage clinical and alternative dispute education for the future members of the bar who will serve

families and children. More importantly, family law attorneys who employ recent graduates should emphasize the importance of the ability to work with different disciplines and support client problem solving as key hiring criteria.

### THE SPARK TO KINDLE THE “WHITE FLAME OF PROGRESS”

For a previous generation, Roscoe Pound’s famous address to the American Bar Association in 1906, *The Causes of Popular Dissatisfaction with the Administration of Justice*,<sup>42</sup> was what the great evidence scholar John Wigmore later called “the spark that kindled the white flame of progress”<sup>43</sup> to improve the civil justice system. Pound identified complex procedure and out-of-date court organization as reasons for popular dissatisfaction with the administration of justice. But he did more. He simultaneously critiqued the shortcomings of the justice system and offered hope that individual lawyers and judges could offer remedies to address the problems he identified. As Wigmore wrote, the most important effect of Pound’s speech “was that some of us met the next day . . . and resolved to do *something* . . . in our own limited spheres” to address the problems Pound identified.<sup>44</sup> Pound’s speech sparked the organized bar’s support for sensible reform. The American Law Institute was founded to deal with the growing complexities of case law, a specific problem Pound identified. The Federal Rules of Civil Procedure were ultimately adopted in a continuing effort to simplify and unify complex court procedures.<sup>45</sup>

Our critical take away from the Pound address is that lawyers can be leaders of change. A Roscoe Pound speaking today who focused on families and the administration of justice would identify the lack of access to the legal system for separating and divorcing families as a cause of popular dissatisfaction with the administration of justice in the twenty-first century. S/he would also emphasize that parents need alternatives to an adversarial, conflict-based framework for separation and divorce and that lawyers should help fully legitimize useful problem-solving and planning options for families. A modern-day Pound would surely advise lawyers to work with other professions to serve the best interests of children and families.

We are hopeful that the HFI Report and the COCD experience will serve as a Pound-like spark to this generation of family lawyers, and they in turn will, in Wigmore’s phrase, resolve to “do *something*” to work collaboratively with courts, communities, and other disciplines to better serve the needs of families and children. The “white flame of progress” will be kindled when the Family Law Bar—collectively and individually—commits itself to change and to working closely with other disciplines in support of parents and children. Our experience with the University-based Resource Center for Separating and Divorcing Families and our early experience with its community-based counterpart the COCD, affirm that the broad direction of the HFI Report is a roadmap to the direction of progress. We urge the Family Law Bar to embrace it.

### NOTES

1. IAALS is a national, independent research center dedicated to facilitating continuous improvement and advancing excellence in the American legal system. For additional information on IAALS and its Honoring Families Initiative (HFI), see [iaals-du.edu](http://iaals-du.edu) (last visited Dec. 9, 2016).

2. Our affiliations with IAALS and HFI and the Centers that is the focus of this Comment are briefly described in my identification footnotes.

3. NATALIE ANNE KNOWLTON, IAALS, *THE FAMILY LAW BAR: STEWARDS OF THE SYSTEM, LEADERS OF CHANGE* 18 (2016), [http://iaals-du.edu/sites/default/files/documents/publications/the\\_family\\_law\\_bar\\_stewards\\_of\\_the\\_system\\_leaders\\_of\\_change.pdf](http://iaals-du.edu/sites/default/files/documents/publications/the_family_law_bar_stewards_of_the_system_leaders_of_change.pdf) [hereinafter HFI Report].

4. *Id.* at 1.

5. *Id.* at 16.

6. *Id.* Summit participants made a number of suggestions for expanding the availability of Center services some of which were already included in the Center design. *Id.*

7. Rebecca Love Kourlis et al., *IAALS' Honoring Families Initiative: Courts and Communities Helping Families in Transition Arising From Separation and Divorce*, 51 FAM. CT. REV. 351, 358–62 (2013).
8. THE CENTER FOR OUT-OF-COURT DIVORCE, <http://centerforoutofcourtdivorce.org> (last visited Sept. 23, 2016) (listing the packages and the cost of their service).
9. LOGAN CORNETT ET AL., OUT-OF-COURT AND IN COLLABORATION: EVALUATING AN INTERDISCIPLINARY MODEL FOR SEPARATION AND DIVORCE IN A UNIVERSITY CAMPUS SETTING, IAALS (June 2016), available at [http://iaals.du.edu/sites/default/files/documents/publications/rscdf\\_out\\_of\\_court\\_and\\_in\\_collaboration.pdf](http://iaals.du.edu/sites/default/files/documents/publications/rscdf_out_of_court_and_in_collaboration.pdf). The evaluation was designed by Marsha Kline Pruett along with Corina Gerety, then IAALS Director of Research and Logan Cornett, IAALS Research Analyst.
10. *Id.* at 42.
11. *Id.* at 5.
12. Melinda Taylor et al., *The Resource Center for Separating and Divorcing Families: Interdisciplinary Perspectives on a Collaborative and Child-Focused Approach to Alternative Dispute Resolution*, 53 FAM. CT. REV. 7 (2015).
13. HFI Report, *supra* note 3, at 1 (Executive Summary).
14. See Rebecca Aviel, *Counsel for the Divorce*, 55 B.C. L. REV. 1099 (2014).
15. HFI Report, *supra* note 3, at 5.
16. NATALIE ANNE KNOWLTON ET AL., IAALS, CASES WITHOUT COUNSEL: RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT 9 (2016), [http://iaals.du.edu/sites/default/files/documents/publications/cases\\_without\\_counsel\\_research\\_report.pdf](http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf).
17. Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants: Final Report* (May 2013).
18. KNOWLTON ET AL., *supra* note 16, at 2 (“Self represented litigants in family court largely desire legal assistance, advice and representation but it is not an option for them due to the cost and having other financial priorities”); Macfarlane, *supra* note 17, at 8 (“The characteristics of the SRL sample are broadly representative of the general Canadian population. 50% were men and 50% were women. 50% had a university degree. 57% reported income of less than \$50,000 a year and 40% [the largest single group] reported incomes of less than \$30,000 a year”).
19. KNOWLTON ET AL., *supra* note 16, at 12.
20. *Id.* at 18.
21. HFI Report, *supra* note 3, at 4.
22. *Id.* at 10.
23. ABRAHAM H. MASLOW, THE PSYCHOLOGY OF SCIENCE 15 (1966).
24. HFI Report, *supra* note 3, at 10.
25. *Id.*
26. See THE CENTER FOR OUT-OF-COURT DIVORCE, *supra* note 8.
27. HFI Report, *supra* note 3, at 15.
28. See IAALS, EDUCATING TOMORROW’S LAWYERS (2016), <http://iaals.du.edu/educating-tomorrows-lawyers>.
29. See Mary E. O’Connell & J. Herbie DiFonzo, *The Family Law Education Reform Project Final Report*, 44 FAM. CT. REV. 524 (2006).
30. HFI Report, *supra* note 3, at 18.
31. *Id.*
32. *Id.* at 9.
33. JOHN DONNE, DEVOTIONS UPON EMERGENT OCCASIONS 31 (1624). “No man is an Island” is a famous line written by the English poet John Donne.
34. HFI Report, *supra* note 3, at 10.
35. See Patrick Parkinson, *The Idea of Family Relationship Centres in Australia*, 51 FAM. CT. REV. 195 (2013).
36. See Lawrie Moloney et al., *Evaluating the Work of Australia’s Family Relationship Centres: Evidence from the First 5 Years*, 51 FAM. CT. REV. 234, 235 (2013).
37. HFI Report, *supra* note 3, at 9.
38. Andrew Schepard, *Kramer vs. Kramer Revisited: A Comment on the Miller Commission Report and the Obligation of Divorce Lawyers for Parents to Discuss Alternative Dispute Resolution with Their Clients*, 27 PACE L. REV. 677 (2007).
39. *Bounds of Advocacy: Goals for Family Lawyers*, AM. ACAD. MAT. L. (2000).
40. See Marshall J. Berger, *Should An Attorney Be Required to Advise a Client of ADR Options?*, 13 GEO. J. LEGAL ETHICS 427, 462–71 (2000) (listing court rules, state statutes, and ethics provisions).
41. HFI Report, *supra* note 3, at 17.
42. Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice, Address Before the Annual Convention of the American Bar Association*, 14 AM. LAW 445 (Aug. 29, 1906).
43. John H. Wigmore, *The Spark that Kindled the White Flame of Progress: Pound’s St. Paul Address of 1906*, 46 J. AM. JUDICATURE SOC’Y 50 (1962–63).
44. *Id.* at 53.
45. See Barry Friedman, *Popular Dissatisfaction with the Administration of Justice: A Retrospective (and a Look Ahead)*, 82 INDIANA L.J. 1193, 1209–10 (2007).

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