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Presentation to

Prospective Collaborative Professionals

March 14, 2008

Turf Valley Country Club
Ellicott City, Maryland

Presented by:

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CIVIL COLLABORATIVE PRACTICE IN PROBATE

PROBATE/ESTATE PLANNING-

1. Litigation Avoidance – Shortcomings of Litigation
2. Preservation of Family Relationships
3. Living Trusts – Avoidance of Probate and Lawyers
(not necessarily foolproof – presents opportunity of Collaborative Practice in event of litigation)
4. Use of Testamentary Documents Requiring or Encouraging Collaborative Practice
5. Tie-in to “No Contest” clauses
6. Pre-Mortem Estate Planning
 - a. Business Succession Planning
 - b. Post Divorce Estate Plans
7. Coordination with Non-Lawyer Experts, e.g., CPA’s Financial Planners, and Insurance Advisors
8. Mediation – Role of Mediators
9. Therapists and Coaches on an Ad Hoc Basis
10. Non-Profits and Charities, Bank Trust Legal Departments, Hospice Services

CIVIL COLLABORATIVE PRACTIC IN MEDICAL ERROR CASES

1. Malpractice Claims
2. Professional and Business Disputes between Physicians, Hospitals, Insurance Companies, Employees, and Vendors
3. Focus on Welfare of the Patient
4. Patients and Family
 - a. Express their feelings/ what went wrong
 - b. Use of coaches, dealing with anger and grief
 - c. Opportunity for patients with less significant injuries or low damages to seek explanation or apology vs. money – Court/Trial
 - d. Faster resolution
5. Medical Professionals
 - a. Private explanation and/or apology vs. admission of fault in Court
 - b. Preserve Doctor/Patient relationship
 - c. Addressing urgent, contested medical decisions
 - d. Maintaining integrity in the medical community
 - e. Getting paid
6. Insurance Companies
 - a. Reduce Defense costs
 - b. Create unique settlement options
 - c. Settle legitimate cases early
 - d. Doctors and Hospitals to encourage use of Collaborative Practice vs. Litigation (premium reduction)
7. “SHOW ME THE MONEY” and “I’M GOING TO RUIN MY DOCTOR”

vs.

“I JUST NEED TO KNOW WHAT HAPPENED” and “I THINK I’VE BEEN INJURED AND DESERVE COMPENSATION” Clients

**CIVIL COLLABORATIVE PRACTICE IN
BUSINESS AND EMPLOYMENT CASES**

1. Business Restructuring – Future Relationships
2. Employee Termination
3. Construction Disputes

ETHICAL CONSIDERATIONS

1. University of Baltimore Law Forum, Vol. 36, No. 1, Fall 2005

The new Maryland Rules of Professional Conduct and Mediation: Perplexing Questions

Answered and Perplexing Questions That Remain – Robert Rubinson

2. Title 17, The Maryland Rules
3. MSBA Ethics Docket 2004-23- Propriety of a “collaborative dispute resolution non-profit organization” – Compliance with Maryland Lawyers’ Rules of Professional Conduct
4. Washington State Bar Association Informal Opinion: 2170 Year issued: 2007
Four Way Agreement
5. Ethics Opinion: Kentucky Bar Association KBA-E-425 issued 6/2005 - No longer duty of zeal but duties of competence and diligence
6. See Maryland Rules of Professional Conduct, Rules 1.1 and 1.3 – Informed Consent

THE NEW LAWYER

1. “Collaborative Lawyers hold out to Clients the expectation that self-determination is the norm for divorcing in a socially responsible manner, that the “good divorce” is expected of them, and that we can help them achieve it.” - *Pauline H. Tesler*

2. Paradigm Shift for Lawyers
 - a. Shallow Peace?
 - b. Positional Negotiations
 - c. Client Centered, Interest Based
 - d. Lawyer as Problem Solver, Process Manager, and Guide to Negotiations,
Lawyer as Professional Team Member, Lawyer as engaged Moral Agent

3. The New Lawyer: How Settlement is Transforming the Practice of Law – Dr. Julie Macfarlane, 2008 UBC Press, ISBN 978-0-7748-1435-5
 - a. Zealous Advocacy Model Remarkably Unaltered
 - b. Client Warrior
 - c. Peace and Resolution vs. Court Battle
 - d. Mediation/Collaborative Practice/Restoration of Justice
 - e. Conflict Resolution Advocacy
 - f. Technical Legal Knowledge/Advice Giving

“The tipping point is that magic moment when an idea, trend, or social behavior crosses a threshold, tops and spreads like wild fire.” - *Malcolm Gladwell, The Tipping Point*