

## THE ROLE OF LAWYERS IN FAMILY LAW DISPUTES

*Assist. Prof. Anica Čulo Margaletić, Ph.D. \**

UDK:347.627.2:347.965(4)

347.627.2:341.92(4)

347.627.2:347.919(4)

Izvorni znanstveni rad

Primljeno: ožujak 2018.

*Since lawyers in most cases are the first to come into contact with families where there is a conflict, it is important to re-examine their role and ability to guide the parties to a different and a more appropriate way of resolving the dispute. The indispensable role of lawyers in developing a culture of peaceful resolution of disputes is recognized in the international documents, particularly those adopted by the Council of Europe. The change in the approach to resolving conflicts in family law matters is accepted in the contemporary legal systems and has contributed to the preservation of the quality of family relationships, a more positive view of lawyers in family law disputes, and, most importantly, a better implementation of the principles of protection of the best interest of the child. This paper will therefore present a new trend in the perception of the role of lawyers in family law disputes starting from the observed special characteristics of family law disputes and their suitability for peaceful resolution. It will also include an overview of the practice of the new models of peaceful resolution of family law disputes developed by lawyers, in which they participate actively and equally with their clients.*

*Key words: family law disputes, lawyers, children, family relations, collaborative law*

---

\* Anica Čulo Margaletić, Ph.D., Assistant Professor, Faculty of Law, University of Zagreb, Trg Republike Hrvatske 14, Zagreb; aculo@pravo.hr;  
ORCID ID: [orcid.org/0000-0001-7688-8366](https://orcid.org/0000-0001-7688-8366)

## 1. INTRODUCTION\*\*

The role of lawyers in judicial proceedings in general and particularly in family law disputes is well known. A lawyer is a legal representative of a party in dispute and his/her main goal is success for his/her client. Focusing on that primary goal often leads to serious consequences for family relations, especially when it comes to children, and those consequences are deeply connected with the nature of judicial proceedings.

Family members who are in a family law dispute are opposing parties and this leads to a deepening of their conflicts and, if the opposing parties are parents, this situation can have a negative impact on their children, who too often become a “weapon” in legal disputes between the people who are primarily supposed to look after their benefit.<sup>1</sup> In judicial proceedings, the parties’ lawyers each pull in their direction, assuming that one person’s gain is necessarily the other person’s loss.

The question I have raised is: should lawyers in family law disputes have different ethical responsibilities and role than lawyers in traditional civil cases? Since the lawyers are the ones who are the first to get in contact with disputing family members seeking legal assistance in resolving their disputes, they are certainly familiar with the mentioned consequences of court proceedings for family relations, especially in case of parents, and issues such as divorce and getting custody over their children.

The issue I would like to analyse in this paper is whether lawyers with their legal knowledge and experience, which they inevitably gain, could play a different role when representing opposing family members in their disputes, by directing their activities not only towards winning the case, considering that “success” for one party usually means failure for both parties, taking into account the effect of the court decision on their relationships.

We should ask ourselves whether lawyers can do something to change this pattern and provide their family law clients with a somewhat different form of assistance than they are usually required. In order to try to find an answer to this question, this paper will present specific characteristics of family law disputes, consider relevant international and domestic legal sources, and review the trends concerning the development of the lawyer’s role in family law disputes.

---

\*\* This article has been written within the framework of the research project “New Croatian Legal System” of the Faculty of Law, University of Zagreb.

<sup>1</sup> Čulo Margaletić, A., *Mirno rješavanje obiteljskopravnih sukoba interesa (Peaceful Resolution of Conflict of Interest in the Area of Family Law)*, doctoral thesis, Faculty of Law, University of Zagreb, 2012, p. 285.

## 2. SPECIAL CHARACTERISTICS OF FAMILY LAW DISPUTES

Family law disputes, especially those that directly or indirectly involve children necessitate considering the best way to protect children whose parents are in dispute, but also helping parents and other family members involved in dispute to resolve it by finding an acceptable solution, based on common interests and values, taking into account the protection of family welfare and preserving the quality of family relationships, especially the relationship between the disputing parents. As is already mentioned above, it is difficult, or even impossible, to achieve that in judicial proceedings. "Judicial proceedings are likely to reinforce the entrenched positions and rarely provide a solution that is acceptable to both parties. They may also lead to further deterioration of the parties' relationship, and family conflicts are likely to last even longer."<sup>2</sup>

"Before becoming legal disputes, family conflicts are essentially matters of emotion, psychology and relationships, in which suffering is the dominant emotion. Whilst judges can rule on disputes, they cannot resolve a couple's conflict: this implies growing inadequacy on the part of the justice system to respond to such conflicts in a satisfactory manner."<sup>3</sup>

It is precisely the emotional context of family relations and their durability, especially when a dispute exists between parents who must continue co-parenting even after their breakup as a couple, that require a different approach of all professionals who work with families in a crisis, including lawyers who are often the first resort for parties in a dispute.

Raising the awareness of special characteristics of family law disputes and of all possible negative impacts of judicial proceedings, as the traditional way of resolving all legal matters, on family relationships, has made it necessary to seek alternative methods of dispute resolution.<sup>4</sup> The aim of those efforts was the so called "win-win" position for parties involved in a family law conflict, based on their cooperation and agreement. The result of those actions in contemporary legal systems are different models of peaceful resolution of family law conflicts.<sup>5</sup>

---

<sup>2</sup> Family mediation and equality of the sexes, Committee on Equal Opportunities for Women and Men, Explanatory memorandum by Mrs Lydie Err, Rapporteuse, II. D. 23., <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10341&lang=en> (01.03.2018).

<sup>3</sup> *Ibid.*, D. 22.

<sup>4</sup> Freeman, M. B., *Moving towards a Collaborative Family Law Paradigm: The Struggle to Bring non-Litigious Divorce to the Masses*, Child and Family Law Journal, vol. 1, no. 1, 2013, p. 33.

<sup>5</sup> Čulo Margaletić, A., *op. cit.* (note 1), p. 1.

This way of dealing with family law disputes is justified, especially when considering the necessity of protecting the best interests of the child in the circumstances of a parental dispute. Helping the parents to achieve a consensual solution in their legal matter that concerns their child, means making the child's interest central in the decision making process, as opposed to common situations in court proceedings, where the child is regularly in the middle of a parents dispute.<sup>6</sup>

The value and importance of peaceful resolution of family law disputes has been recognized and promoted in the international agreements to which Croatia is a state party.

### 3. THE EUROPEAN PERSPECTIVE OF PEACEFUL RESOLUTION OF FAMILY LAW CONFLICTS AND THE ROLE OF LAWYERS

When it comes to peaceful resolution of family law disputes, two conventions of the Council of Europe must be mentioned: the European Convention on the Exercise of Children's Rights<sup>7</sup> and the European Convention on Contact concerning Children<sup>8</sup>, but also other non-binding documents recognized by the oldest international organization in Europe, which primarily consider the role of lawyers when it comes to the increasingly frequent application of peaceful resolution of family law disputes.

To be more specific, in accordance with Article 13 of the European Convention on the Exercise of Children's Rights, "[i]n order to prevent or resolve disputes or to avoid proceedings before a judicial authority affecting children, Parties shall encourage the provision of mediation or other processes to resolve disputes and the use of such processes to reach agreement in appropriate cases to be determined by Parties."

---

<sup>6</sup> "It should not be forgotten that children are at the heart of unsettled conflicts between couples, and frequently become a preferred tool, enabling couples who have not accepted the end of their relationship to remain together in conflict." Family mediation and equality of the sexes, Committee on Equal Opportunities for Women and Men, Explanatory memorandum by Mrs Lydie Err, Rapporteuse, II. D. 24., <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10341&lang=en> (01.03.2018).

<sup>7</sup> Official Gazette - International Agreements, No. 1/2010, hereinafter: the 1996 Convention. The 1996 Convention was signed on 25 January 1996 in Strasbourg, and came into force in the Republic of Croatia on 1 August 2010.

<sup>8</sup> Official Gazette - International Agreements, No. 7/2008, 1/2009, hereinafter: the 2003 Convention. The 2003 Convention was signed on 15 May 2003 in Strasbourg, and came into force in the Republic of Croatia on 1 June 2009.

In the Explanatory Report<sup>9</sup>, p. 65, it is added that “In appropriate cases to be determined by internal law, it may be necessary to promote the friendly settlement of disputes concerning the exercise of children’s rights. Mediation should be possible independently of any intervention by a judicial authority, before and during proceedings, or even afterwards if a conflict arises while the decision taken by the judicial authority is being enforced. The other processes referred to in this article are informal processes to resolve disputes which enable the persons concerned to reach an agreement by negotiation.”

Agreements resulting from mediation or other processes of peaceful dispute resolution should not be against the best interests of children. If that would be the case, it could be possible for the judicial authority referred to in paragraph *a* of Article 2<sup>10</sup> of Convention 1996, to act and take a decision. (See p. 66 Explanatory Report).

It is clear that in the event of conflict, according to the 1996 Convention, it is desirable for families to try to reach an agreement before bringing the matter before a judicial authority (see p. 67. Explanatory Report) and the state is obliged in that sense to assist families in need (conflict).

The Convention on Contact concerning Children also promotes peaceful resolution of conflicts concerning children. According to Article 7 of the Convention 2003 “When resolving disputes concerning contact, the judicial authorities shall take all appropriate measures: (...)

b) to encourage parents and other persons having family ties with the child to reach amicable agreements with respect to contact, in particular through the use of family mediation and other processes for resolving disputes.”

As concerns contact agreements, judicial authorities shall, upon request, “except where internal law otherwise provides, confirm an agreement on contact concerning a child, unless it is contrary to the best interest of the child.” (Article 8 Par. 2).

The fact that especially judges, and of course lawyers, have a very important role in promoting the peaceful way of resolving family law matters arises from the Guidelines for a better implementation of the existing recommendation

---

<sup>9</sup> Explanatory Report to the European Convention on the Exercise of Children’s Rights, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTM-Content?documentId=09000016800cb5ee> (01.02.2018).

<sup>10</sup> In the Preamble of the Convention 1996 it is explained that “For the purposes of this Convention: a) the term “judicial authority” means a court or an administrative authority having equivalent powers.”

concerning family mediation and mediation in civil matters, adopted by the European Commission for the Efficiency of Justice (CEPEJ) in December 2007.

In point 13 it is stated that “The codes of conduct for lawyers should include an obligation or a recommendation to consider alternative means of dispute resolution including mediation before going to court in appropriate cases, and to give relevant information and advice to their clients”, whereas the next point states that “[b]ar associations and lawyers associations should have lists of mediation providers and disseminate them to lawyers.”

From the financial aspect, we would like to stress the importance of point 54 of Guidelines 2007, which says that “Member States and Bar associations should take measures to create legal fee structures that do not discourage lawyers from advising clients to use mediation in settling disputes.”

Proceedings which would take into consideration not only the interests of the represented party, but also the protection of the family, especially children, would facilitate a great contribution of lawyers’ expertise to the acceptance of a different concept of dispute resolution in family law matters.

Despite the fact that our legal system still prefers the culture of resolving disputes in court proceedings as a regular way of providing legal protection, even when it comes to family law matters, increased awareness of other possible ways of resolving the mentioned disputes can be noticed.

Awareness of such possibilities is necessary when it comes to experts working with families, especially lawyers and judges, as is general support of the society, including financial support. Apart from that, it is necessary to make the public familiar with the possibility of dealing with family law matters outside court proceedings due to the fact that the court should be the last place to resolve family law matters, and that prior to engaging in them the parties should become acquainted with the benefits of another way.<sup>11</sup>

#### 4. CHALLENGES FOR LAWYERS IN CROATIAN LEGAL SYSTEM

A step forward in the Croatian legal system concerning peaceful resolution of family law matters was taken with the introduction of the institute of family mediation, which, by its content represents an improvement in the legal regulation of this area compared to the previous legal solutions. However, it should also be

---

<sup>11</sup> A tendency of directing parties to solve their disputes in court as the last possibility given by the party’s lawyer is present in legal systems with developed models of peaceful resolution of family law matters. See: Lande, J.; Mosten, F.S., *Family Law-ying: Past, Present and Future*, Family Court Review, vol. 51, no. 1, 2013, p. 23.

noted that the Croatian family law system has had a long tradition in peaceful resolution of disputes concerning divorce since 1946 and the General Marriage Act.

According to the provision of Article 331, paragraph 1 of the Family Act 2015<sup>12</sup> “family mediation is a procedure in which parties aim to mutually resolve their dispute arising from family relations by obtaining assistance from one or more family mediators.”

A family mediator is defined in the said Act as an impartial and specially trained person entered in the register of family mediators, while the main purpose of the family mediation process is to devise a plan of mutual parental custody (parenting plan) and agree on other matters concerning their child. In the course of this process, the parties can also agree on other issues, such as those concerning assets and other issues.<sup>13</sup>

The question that can be asked here is what kind of role a lawyer can play in the process of family mediation as a different way of dealing with family disputes.

In seeking the answer to this question, we should look at the experiences in other states that have a long tradition in family mediation, which suggest that it is not impossible for a lawyer to take the role of the mediator.

To be more specific, in the legal systems where we can find the beginnings of contemporary models of family mediation lawyers can very often be found in the role of mediators. Jurists, and especially lawyers, have turned from vehement opponents into staunch proponents of family mediation, so that in the legal systems of the common law judicial tradition there are law offices that exclusively provide family mediation services.<sup>14</sup>

According to Croatian regulations, if a lawyer would like to act as a mediator, he/she needs additional training that is laid down in the Ordinance on Family Mediation from 2015.<sup>15</sup>

---

<sup>12</sup> Official Gazette, Nr. 103/2015.

<sup>13</sup> See Art. 331 Par. 2 and 3 Family Act.

<sup>14</sup> See: Westcott, J., *The Origins and Development of Family Mediation in the UK*, in: Westcott, J. (ed.), *Family Mediation: Past, Present and Future*, Family Law, Jordan Publishing Limited, Bristol, 2004, p. 5. and Čulo Margaletić, A., *op cit.* (note 1), p. 114.

<sup>15</sup> Article 2, paragraph 3 of the Ordinance (Official Gazette, No. 123/2015) provides that only a person with a postgraduate university specialist degree in family mediation can be entered in the Register of Family Mediators, while paragraph 4 allows an exception according to which “by 1 January 2018, a person who meets the following conditions can also be entered into the Register of Family Mediators:

- has an undergraduate and graduate university degree or an integrated undergraduate and graduate university degree in law, social work, psychology, pedagogy, social pedagogy or educational rehabilitation;

In addition, Article 342 of the Family Act regulates the obligation to educate and continuously train family mediators, which is surely in accordance with the practice in other countries.

What is disputable in our opinion is the provision requiring that family mediators have a postgraduate university specialist degree. Even though this solution, on the one hand, guarantees a high quality of future mediators, on the other hand its necessity is questionable taking into consideration that persons who wish to do family mediation already have some basic knowledge necessary for family mediation from their professional qualifications (lawyers, social workers, psychologists) and only need to update their knowledge and gain the necessary skills to be able to effectively conduct the process.

The leading organization for family mediation in Germany, *Bundesarbeitsgemeinschaft für Familienmediation* (BAFM)<sup>16</sup>, founded in 1992 in Bad Boll, stipulates that, in order to become a member of that organisation, the applicant must have two years of experience in the profession (which also includes a licence to conduct family mediation), complete the BAFM-recognised foundation training of at least 200 hours, followed by practical training under supervision, using co-mediation.<sup>17</sup>

The European Forum for Research and Training in Family Mediation and Mediation has specified that the duration of the family mediation training is to be at least 30 days (180 hours) long, including at least 120 hours centred on

- 
- has at least two years of working experience in his/her field, which includes work with children, young people and families;
  - is attending a postgraduate university specialist study in family mediation and has fulfilled all his/her obligations concerning the courses and practical training in the first three terms of the study or has completed a training programme in the duration of at least 40 hours that comprises items prescribed in Article 342, paragraph 1 of the Family Act (National Gazette, No. 103/15)", followed by explanation in paragraph 5, according to which the "[p]erson referred to in paragraph 4 of this Article will be expunged from the Register of Family Mediators by 1 January 2018 by the Ministry *ex officio* unless the person submits evidence confirming that he/she meets the conditions prescribed in paragraph 3 of this Article."

<sup>16</sup> For more about that federal organization for family mediation see: Schröder, R., *Familien-mediation*, Verlag Ernst und Werner Gieseking, Bielefeld, 2004.

<sup>17</sup> *Ausbildungsordnung der BAFM für Familien-Mediation*, <http://www.bafm-mediation.de/mediationsausbildung/ausbildungs-richtlinien-der-bafm/ausbildungsordnung-der-bafm-fuer-familien-mediation/> (10.02.2018); Parkinson, L., *Training for Family Mediation – a Glance Across Europe*, [http://www.themediationcentre.co.uk/cms/document/Training\\_for\\_family\\_mediation.pdf](http://www.themediationcentre.co.uk/cms/document/Training_for_family_mediation.pdf) (15.02.2018).



the process of mediation. The duration of the international family mediation training is at least 80 hours. “The training must include theoretical contributions (courses and bibliographies), updates in situation (role-playing games, etc...), vary the teaching materials (videos, power-points, etc...) and include personal work and controls.”<sup>18</sup>

Taking into account the above mentioned facts and the necessity of practical application of peaceful resolution of family law matters, it becomes clear that a suitable training programme for family mediators should be set up, which would not be too long and should offer the possibility to all who already have the basic knowledge required for conducting this procedure (jurists, social workers, social pedagogues and other similar professions) to enter the programme which will provide them with additional knowledge and skills.

The role of the lawyer in the process of peaceful resolution of disputes in family matters could be to suggest the parties to consider mediation and get them acquainted with it, as well as to provide advice to the party who opts for mediation in resolving some issues during the proceedings.<sup>19</sup> In order to be able to take these roles, lawyers have to know something about the mediation procedure and its basic characteristics and possibilities. Therefore, additional education is necessary in order to play this role successfully.<sup>20</sup>

A lawyer can also act on the margins of the family mediation procedure as a legal counsellor to whom the parties may refer at any time during the mediation procedure. Such a possibility is provided by the Family Act, Article 336, paragraph 1, which states among other things that “the family mediator shall ... inform [the parties] about the possibility of having their agreement reviewed by another expert.”

---

<sup>18</sup> Training Standards of the European Forum for Research and Training in Family Mediation and Mediation, <http://www.forumeuropeen.eu/committee-members-of-standards/training-standards/?lang=en> (20.09.2017).

<sup>19</sup> Bryan, P. E., *Reclaiming Professionalism: The Lawyer's Role in Divorce Mediation*, in: Murphy, J. C.; Rubinson, R. (eds.), *Family mediation: Theory and Practice*, LexisNexis, 2009, p. 224.

<sup>20</sup> Lawyer Associations in the USA advocate for introduction of obligatory education of lawyers dealing with family law on models of peaceful resolution of family law matters through programmes of continuing legal training – mandatory continuing education. For more see: Cohen, D., *Making alternative dispute resolution (ADR) less alternative: the need for ADR as both a mandatory continuing legal education requirement and a bar exam topic*, *Family Court Review*, vol. 44, no. 4, 2006, p. 648.

The role of the lawyer in family mediation is described as directed at reaching the best possible resolution and is referred to as “conflict resolution advocacy”.<sup>21</sup> As Mayer has noted “[t]he law profession at first resisted mediation and then co-opted it.”<sup>22</sup>

The Attorney’s Code of Ethics of the Croatian Bar Association contains a provision according to which a lawyer, if it is in the interest of his/her party, must encourage the opposing parties to come to an agreement outside court or any other proceedings. Further, it stipulates that a lawyer must try, during court or any other proceedings, to settle the case if this is in his/her party’s interest.

Speaking of disputes in family law matters, and especially of disputes concerning children, it is undoubtedly in the interest of the parties to settle the case. Experience from systems that use family mediation confirms that this form of assistance in family law disputes reaffirms and strengthens the principle of the best interest of the child as the basic principle and guiding thought for all those who have the right and responsibility to decide on issues concerning the child. Therefore, the above-mentioned Code of Ethics and the content of the quoted Guidelines 2007 should be interpreted in favour of broader implementation of mediation in family disputes, especially on the advice of lawyers.

What is missing, in our opinion, in the said Attorney’s Code of Ethics is pointing out that lawyers, when representing their parties in a dispute concerning a child, should take into account not only the interest of their party, but also the best interest of the child and then lead their party in that direction.

The activity of lawyers with such tendencies could be regulated by the Croatian Bar Association. Such a change in the lawyer’s role, i.e. his/her attitude to dispute resolution in family law matters is not unknown in other legal systems.

For example in Canada there is statutory endorsement of negotiation and mediation in family disputes. The federal Divorce Act (s. 9.) sets out a requirement (duty) for every lawyer “...who undertakes to act on behalf of a spouse in a divorce proceeding to discuss with the spouse the advisability of negotiating the matters that may be the subject of a support order or a custody order and

---

<sup>21</sup> Mosten, F. S., *Emerging Roles of the Family Lawyer: A Challenge for the Courts*, in: Singer, J.; Murphy, J. (eds.), *Resolving Family Conflicts*, Ashgate Publishing Limited, Aldershot, 2008, p. 372.

<sup>22</sup> Mayer, B. S., *Beyond Neutrality: Confronting The Crisis In Conflict Resolution* 69 (2004). As cited in: Berman, D.; Alfini, J., *The Future Of Court ADR: Mediation and Beyond: Lawyer Colonization of Family Mediation: Consequences and Implications*, Marquette Law Review, vol. 95, no. 3, 2012, p. 895.

to inform the spouse of the mediation facilities known to him or her that might be able to assist the spouses in negotiating those matters.”<sup>23</sup>

In Ireland “solicitors should encourage clients to remember that, in most cases, they will be continuing to co-parent with the other party and it is better to acknowledge the other party’s strengths as a parent rather than to condemn his or her weaknesses in an inflammatory negative statement.”<sup>24</sup>

According to “Best Practice Guidelines for lawyers doing family law work” prepared by the Family Law Council and Family Law Section of the Law Council of Australia “Best practice in family law is characterised by, *inter alia*, a “constructive and conciliatory approach to the resolution of family disputes”, but also by “having regard to the interests and protection of children and encouraging long-term family relationships”.<sup>25</sup>

“In all matters involving children it is important for lawyers to bear in mind and to emphasise to clients, throughout the case, the continuing nature of the relationship of parent and child and the benefits that cooperation between the parents brings to the children. When dealing with parenting issues, lawyers always need to remember that the court’s paramount consideration is the best interests of the child. Accordingly when acting for parents, or as an Independent Children’s Lawyer, lawyers should be encouraged to advise their clients that the court will be approaching the matter from the viewpoint of what is best for the child and that this can override the wishes of either of the parents or the child or both.”<sup>26</sup> Furthermore, “[l]awyers should use their best efforts to dissuade clients from making applications for parenting orders which are motivated by considerations other than the children’s welfare.”<sup>27</sup>

It is also important to mention the role of lawyers in leading parties to a consensual resolution of the family law dispute.

---

<sup>23</sup> Cameron, N., *Collaborative Practice in the Canadian Landscape*, Family Court Review, vol. 49, no. 2, 2011, p. 222.

<sup>24</sup> Family Law Code of Practice, Law Society of Ireland, p. 17. <https://www.lawsociety.ie/globalassets/documents/committees/family/family-law-handbook-2017.pdf> (22.02.2018).

<sup>25</sup> Best Practice Guidelines for lawyers doing family law work (2nd edition) prepared by the Family Law Council and Family Law Section of the Law Council of Australia, p. vi, <https://www.familylawsection.org.au/resource/BestPracticeGuidelines-v8FINAL.pdf> (02.03.2018).

<sup>26</sup> *Ibid.*, p. 7, 38.

<sup>27</sup> *Ibid.*, p. 38.

“At an early stage, unless it is clearly inappropriate to do so, the lawyer should explain the various ADR processes and advise clients on the benefits and/or limitations of these processes in their particular case, as well as the role of lawyers in supporting each process.”<sup>28</sup>

“Before filing court documents lawyers acting for applicants should make a determined effort to explore options for settlement. Court proceedings should normally only be commenced if all other reasonable avenues for resolution have been considered and found to be inappropriate or unworkable. However there may be cases where, because of the pressing or urgent nature of the issues, it is necessary to file the court documents immediately.”<sup>29</sup>

What is more, in some legal systems, the lawyers have gone a few steps further on self-initiative. They do not only encourage their parties to solve disputes peacefully and help them in this procedure as mediators, but have also developed a special model of settling disputes in family law matters in which they play an active part, much different from the one of a mediator in the process of family mediation.

The fact that lawyers themselves have created this new model shows their awareness and concern, probably stemming from the many negative consequences of “the regular way” they have witnessed, especially in regard to disputes directly or indirectly involving children. Practice of such model, shaped by lawyers primarily involved in family law, has developed to such an extent that it became a subject of legal regulations. This is known as *collaborative law*, a model of peaceful resolution of family law matters that was developed in the legal systems of the United States of America, England and Wales, and the practice of which has spread across the world, and whose popularity is constantly growing. The practice of that “next-generation family law dispute-resolution mode”<sup>30</sup> will be presented below.

## 5. PARADIGM SHIFT IN THE PERCEPTION OF LAWYERS IN FAMILY LAW DISPUTES – THE LATEST CHALLENGE FOR PRACTICE

That new model of settling disputes in family law matters, developed by a group of lawyers who primarily dealt with family law and were aware of dev-

---

<sup>28</sup> *Ibid.*, p. 14.

<sup>29</sup> *Ibid.*, p. 7, 8.

<sup>30</sup> Tesler, P., *Collaborative Law, Achieving Effective Resolution in Divorce Without Litigation*, second edition, American Bar Association, 2008, p. 3.

astating consequences which court proceeding can leave on children and other family members, is perceived as one of the biggest achievements of the American legal system in the last few decades.<sup>31</sup>

Collaborative family law is a dispute resolution model focused on cooperative problem-solving, maintaining open communication and information sharing, aiming to negotiate and achieve a mutually acceptable and “fair” settlement, i.e. solutions that maximize the benefits and minimize the detrimental damage to the family relations, taking into account the highest priorities and interest of both parties involved and their children.

This family law dispute resolution model provides privacy, flexibility and efficiency, “looking at the family as a whole, and viewing success as the best possible outcome for everyone involved, not just in the short term but for years ahead.”<sup>32</sup>

“Collaborative law is similar to mediation in its focus on the divorcing couple’s emotions and the preservation of an ongoing family relationship.”<sup>33</sup>

Prior to the beginning of the collaborative process both parties agree to negotiate amicably and in good faith, to provide timely, accurate and complete disclosure (full disclosure clause for all material information), to maintain the *status quo* with no unilateral changes until agreement is reached and to conduct themselves with appreciation and respect of the opposing party, his/her needs and interests.

“Collaborative law involves the participation of all parties in four-way negotiations, characterized by participation in group meetings to move closer to settlement, where no party’s voice is permitted to dominate over the others.”<sup>34</sup>

To be more specific, issues are resolved in four-way face-to-face meetings and every party has his/her own lawyer and they together “ask questions, share information, brainstorm, evaluate alternatives, and offer proposals”<sup>35</sup> with the ultimate goal of reaching an amicable solution of their dispute that is acceptable to both parties.

---

<sup>31</sup> *Ibid.* p. xv.

<sup>32</sup> DeMeo, R. A., *The Expanding Role of Collaborative Family Law*, in: Fournier, E. (ed.), *Inside the Minds, Understanding Collaborative Family Law*, Thomson Reuters/Aspatore, 2011, p. 29.

<sup>33</sup> Vu, T. D., *Going to Court As a Last Resort: Establishing a Duty For Attorneys in Divorce Proceedings to Discuss Alternative Dispute Resolution With Their Clients*, *Family Court Review*, vol. 47, no. 3, 2009, p. 590.

<sup>34</sup> *Ibid.*, 591.

<sup>35</sup> Tesler, P., *op. cit.* (note 30), p. 11.

Such negotiations are directed towards reaching an agreement through cooperation aiming “to find new and even creative means to resolve the disputes as efficiently and cooperatively as possible.”<sup>36</sup>

Collaborative law refers to conduct based on a participation agreement (collaborative contract) as the cornerstone of collaborative practice, which certifies that the parties understand and accept the ground rules defining the collaborative process and that the agreement is a binding contract between the parties, and their lawyers should describe the procedures of collaborative law.<sup>37</sup> The contract signed by both lawyers and both parties at the start of a collaborative case also contains one very valuable element, which is the obligation of all participants to give priority to the child’s interest.<sup>38</sup>

The most crucial and defining feature of the participation agreement is the lawyer disqualification clause. That is to say, resorting to litigation is prohibited for collaborative lawyers and therefore if either client wishes to proceed to litigation, the collaborative process has failed and must terminate, both lawyers are automatically disqualified from further representation of the parties and must withdraw, and cannot represent either party against the other thereafter, while each client will have to hire a new lawyer in order to proceed.<sup>39</sup> An advantage of this clause is that it “focuses the minds of both lawyers and clients towards achieving a settlement”<sup>40</sup> since “the risks and costs of failure are distributed to the lawyers as well as the clients.”<sup>41</sup>

The same disqualification clause is also applicable to every professional participant involved in the collaboration process. Therefore, if expert consultants are needed during the collaborative process (e.g. financial or mental health professionals), they are ordinarily retained jointly, and if the collaborative process breaks down they are disqualified from participating in subsequent litigation.<sup>42</sup>

---

<sup>36</sup> Vu, T. D., *op. cit.* (note 33), p. 591.

<sup>37</sup> *Ibid.*

<sup>38</sup> Wright, K., *The Evolving Role of the Family Lawyer: The Impact of Collaborative Law on Family Law Practice*, Child and Family Law Quarterly, vol. 23, no. 3, 2011, p. 372. See also: Degoldi, B., *Lawyers’ Emerging Experiences of Interdisciplinary Collaborative Separation and Divorce*, Psychiatry, Psychology and Law, vol. 15, no. 3, 2008, p. 397, 398.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> Tesler, P., *op. cit.* (note 30), p. 3.

<sup>42</sup> Tesler, P., *op. cit.* (note 30), p. 4; Lande, J.; Herman, G., *Fitting the Forum to the Family Fuss, Choosing Mediation, Collaborative Law, or Cooperative Law for Negotiating Divorce Cases*, Family Court Review, vol. 42, no. 2, 2004., p. 283.

Collaborative lawyers promote a conciliatory, pro-settlement approach, emphasize interest-based negotiation as opposed to position-based negotiation, which is ordinarily used in litigation, encourage attention to the needs of children, attempt to resolve the dispute so that one person's gain is not necessarily the other person's loss.

"If either party seeks to maximize its gain at the expense of the other party, such action can stimulate a spiral of retaliatory actions and undermine the potential for cooperation."<sup>43</sup>

Lawyer's conduct in this model of resolving disputes in family law matters differs significantly from the usual conduct of a lawyer in a court proceeding, and arises primarily from the aim of pursuing collaboration, set in advance. They advise their clients about the law and how to achieve the best outcome but in a different manner than other lawyers because their clients have identified reaching a reasonable, acceptable settlement as the top priority of their action.<sup>44</sup>

"The lawyers are expected to advise, support, and represent their client but also to encourage the parties to work together, share information and seek resolutions that meet the needs of both parties. It is the client's job to come up with goals and work toward them. The client must understand that they have the duty to work toward those goals and while they have the right to take themselves out of the process, they do not have the right to take their lawyer with them."<sup>45</sup>

In the collaborative law process, litigation represents a failure to meet the objective for which the client hired the lawyer.<sup>46</sup> For family lawyers who practice collaborative law and help family members to achieve a satisfactory, self-generated solutions that their clients, fully informed and advised, believe are in their long-term best interest, is very satisfying and gives lawyers a sense of contentment with their role in the successful outcome.<sup>47</sup>

In support of the above, Tesler, a leading collaborative lawyer from the USA, claims:

---

<sup>43</sup> Lande, J.; Herman, G., *op.cit.* (note 42), p. 283.

<sup>44</sup> Tesler, P., *op. cit.* (note 30), p. 17. See also: Čulo Margaletić, A., *op. cit.* (note 1), p. 80.

<sup>45</sup> Harrington, T., *Collaborative Law: A Paradigm Shift for Attorneys*, in: E. Fournier (ed.), *Inside the Minds, Understanding Collaborative Family Law*, Thomson Reuters/Aspatore, 2011., p. 98.

<sup>46</sup> Tesler, P., *op. cit.* (note 30), p. 17.

<sup>47</sup> *Ibid.*, p. 19.

“It is not overstating the matter to say that working with other lawyers in such a model allows one to feel a rekindled sense of pride in the practice of law itself. A successful collaborative representation not only resolves the legal issues associated with divorce, it can also help the clients aspire to and achieve transition through an extremely difficult life passage with dignity and a sense of recovered competency and wholeness.”<sup>48</sup>

In accordance with the above, collaborative law is being recognized in literature as belonging not only in the rubric of alternative dispute resolution, but also as part of relatively new academic disciplines: “therapeutic jurisprudence” and “preventive law”.<sup>49</sup> Therapeutic jurisprudence is focused on the client’s well-being and humanization of the legal profession.<sup>50</sup>

Lawyers are increasingly developing and turning to forms of consensual dispute resolution.<sup>51</sup> As Virk says “[t]he dynamic of four people sitting down together to try to find solutions that will benefit the family as a whole are much different than the dynamics of litigation.”<sup>52</sup> Indeed, “to approach the restructuring of the family as an inquiry into what will work best overall serves to greatly improve the likelihood that parties will be able to amicably co-parent their children in the future. Furthermore, when children are not placed between battling parents, they are more likely to become better-adjusted contributors to, and not drains on, their communities.”<sup>53</sup> Negotiations in the collaborative process “rely on a sense of cooperation, integrity, honesty and above all professionalism focused on the main aim: future wellbeing of the family.”<sup>54</sup>

Through collaboration practice, “parties can address issues that could not be addressed in litigation and can reach results that would be unlikely to occur through litigation.”<sup>55</sup> In addition, this method for resolving family law disputes “is especially well suited for cases where the parties wish to address the emotional issues underlying their divorce.”<sup>56</sup> Besides that, collaborative meetings

---

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.* See also: Čulo Margaletić, A., *op. cit.* (note 1), p. 82.

<sup>50</sup> Tesler, P., *op. cit.* (note 30), p. xx.

<sup>51</sup> Virk, R. L., *When is Collaboration the Most Appropriate Method of Dispute Resolution in Divorce, and Why Is It Beneficial to Collaborate?*, in: E. Fournier (ed.), *Inside the Minds, Understanding Collaborative Family Law*, Thomson Reuters/Aspatore, 2011, p. 80.

<sup>52</sup> *Ibid.*, p. 85.

<sup>53</sup> *Ibid.*

<sup>54</sup> Degoldi, B., *op. cit.* (note 38), p. 397.

<sup>55</sup> Virk, R. L., *op. cit.* (note 51), p. 89.

<sup>56</sup> *Ibid.*, p. 88.



offer “greater opportunity to explore a number of possible solutions”<sup>57</sup>, allowing for “a more open and direct dialogue for the parties”.<sup>58</sup>

Collaborative practice is less costly than litigation. Neutral experts can be retained jointly in the collaborative process, resulting in cost savings to the parties.<sup>59</sup> The collaborative process “is focused on making sure everyone is heard, and that every need and interest is valued in a safe environment with all the legal information necessary.”<sup>60</sup> Interest-based or needs-based negotiation is the preferred mode applied in collaborative practice.<sup>61</sup> This mode of conduct requires considerable groundwork between collaborative lawyer and client before any issue is opened for discussion with the other party.<sup>62</sup> That is to say, it is very important that parties recognize and understand their true needs and interests that are the basis of their position, and that there are so many possibilities to get those needs and interests met, so the openness to all possible options is indispensable. Tesler emphasizes:

“...lawyer and client examine every one of the client’s identified goals and priorities under a microscope, “peeling the onion” down from what the client initially states as goals and priorities, to examine why the client wants each goal, what benefits achieving the goal would bring to the client, whether there might be other ways of achieving the same benefits that are as good as or better than the means the client has identified, and whether the goal can be described at the four-way table in terms that any reasonable person of good faith would recognize as legitimate.”<sup>63</sup>

In 2009 The National Conference of Commissioners on Uniform State Laws adopted The Uniform Collaborative Law Rules/Act (UCLR/A)<sup>64</sup> and subsequently amended it in 2010. This Rules/Act standardizes the most important features of collaborative law practice in the USA. The UCLR/A represents a necessary comprehensive statutory framework which guarantees the benefits of the collaborative process and further enhances its use.

---

<sup>57</sup> Wright, K., *op. cit.* (note 38), p. 388.

<sup>58</sup> *Ibid.*, p. 389.

<sup>59</sup> Virk, R. L., *op. cit.* (note 51), p. 89.

<sup>60</sup> Harrington, T., *op. cit.* (note 45), p. 92.

<sup>61</sup> Tesler, P., *op. cit.* (note 30), p. 85.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> The Uniform Collaborative Law Rules/Act, <http://www.uniformlaws.org/Act.aspx?title=Collaborative%20Law%20Act> (01.03.2018).

The Uniform Collaborative Law Rules and Act “aims to standardize the most important features of collaborative law participation agreements. It mandates essential elements of a process of disclosure and discussion between prospective collaborative lawyers and prospective parties to better insure that parties who sign participation agreements do so with informed consent. It requires collaborative lawyers to make reasonable inquiries and take steps to protect parties against the trauma of domestic violence. The rules/act also makes collaborative law’s key features — especially the disqualification provision and voluntary disclosure of information provision — mandated provisions of participation agreements that seek the benefits of the rights and obligations of the rules/act. Finally, the rules/act creates an evidentiary privilege for collaborative law communications to facilitate candid discussions during the collaborative law process.”<sup>65</sup>

The Rules/Act has no detailed provisions on collaborative law practice in order to stimulate diversity and continuing experimentation in this field.

The American Bar Association has concluded that the same ethical rules are obligatory for lawyers who practice collaborative law as for all other lawyers and that collaborative practice is consistent with those rules. Moreover, Rule 13 and Section 13 of the UCLA Uniform Collaborative Law Rules and Act explicitly states “the Act does not change the professional responsibility obligations of lawyers practising collaborative law.”<sup>66</sup>

The UCLA Uniform Collaborative Law Rules and Act does not prescribe special qualifications and training for lawyers or other affiliated professionals who participate in the process of collaborative law because it is expected that those professionals who are involved in the collaborative law practice “will continue to form and participate in voluntary associations of collaborative professionals who can prescribe standards of practice and training for their members. Many such private associations already exist and their future growth and development is foreseeable and encouraged.”<sup>67</sup>

Collaborative law has mostly been embraced in family and divorce disputes, but efforts are underway to expand its use in other areas of practice.<sup>68</sup> Reasons for that expansion may be found in the fact that resolving disputes in that manner reduces the costs of dispute resolution for parties and emphasizes the

---

<sup>65</sup> Uniform Collaborative Law Rules/Act (last revised or amended in 2010) with prefatory note and comments, [http://www.uniformlaws.org/shared/docs/collaborative\\_law/uclranducla\\_amendments\\_jul10.pdf](http://www.uniformlaws.org/shared/docs/collaborative_law/uclranducla_amendments_jul10.pdf) p. 22 (01.03.2018).

<sup>66</sup> *Ibid.*, p. 20.

<sup>67</sup> *Ibid.*, p. 24.

<sup>68</sup> *Ibid.*, p. 9.

importance of party self-determination and consequently provides greater satisfaction to people who have used that alternative option.<sup>69</sup> Collaborative law also has significant benefits to the public “in promoting peaceful, durable resolution of disputes and a positive view of the civil justice system by participants and the general public.”<sup>70</sup>

Parents in family law disputes are free to decide that their well-being and the well-being of their children is better promoted by dispute resolution through alternative dispute resolution - collaborative law, rather than in more traditional litigation, bearing in mind that dissolution and, consequently, reorganization of family life can produce and generate intense anger, stress, and anxiety, emotions which can be exacerbated by adversary litigation as the traditional method for resolving all disputes connected with divorce and dissolution of a family unit.<sup>71</sup>

The needs of children are particularly of concern in most family cases, and unfortunately, children are often exposed to high levels of inter-parental conflict which leads to an increased risk of a range of negative outcomes for the child’s development, especially in the emotional sphere (e.g. anxiety, depression, aggression, behavioural problems, a decrease in social competence, lower cognitive outcomes).<sup>72</sup>

Besides those risks, the level of inter-parental conflict impacts on the realization of other child’s rights. There are researches showing that it is more likely that the child will have regular contact with both parents and that maintenance for the child will be regularly paid if conflict levels between parents are lower.<sup>73</sup>

Having that in mind, every effort, especially by the lawyers, who are often the first resort of the parents in conflict, in promoting models of resolution of family law conflicts that could decrease those risks is extremely important and valuable and should therefore be encouraged.

Parties who participate in consensual dispute resolution processes such as collaborative law are more likely to comply with the agreement than with one imposed on them. Peaceful dispute resolution also gives parties the greatest op-

---

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*, p. 9, 10.

<sup>72</sup> Acquah, D.; Sellers, R.; Stock, L.; Harold, G., *Inter-Parental Conflict and Outcomes for Children in the Contexts of Poverty and Economic Pressure*, Early Intervention Foundation, April 2017, p. 22, [http://www.eif.org.uk/wp-content/uploads/2017/04/interparental-conflict-children-poverty-economic-pressure\\_April2017.pdf](http://www.eif.org.uk/wp-content/uploads/2017/04/interparental-conflict-children-poverty-economic-pressure_April2017.pdf) (01.03.2018).

<sup>73</sup> Schepard, A., *Children, Courts and Custody*, Cambridge University Press, Cambridge, New York, 2004, p. 63.

portunities for participation in determining the outcome of the process, allows self-expression, and encourages communication promoting the preservation and protection of the continuing family relations.

In addition, collaborative law also has benefits for the legal profession. It provides professional satisfaction to the lawyers who practice it and is especially well suited to the emerging role of the lawyer as the problem solver for a party in a divorce or family dispute. Not all disputes can or should be resolved through collaborative law, or other peaceful dispute resolution methods, and the overall goal is not to do away with litigation, but rather to develop responsible alternatives to supplement litigation so that parties have multiple options and an opportunity to choose the way in which the dispute can be resolved. Parties can then decide for themselves if the costs of litigation outweigh its benefits in their particular circumstances and what alternative processes might best suit them.<sup>74</sup>

The collaborative law process provides lawyers and clients with an important, useful, and cost-effective option for amicable, non-adversarial dispute resolution.

“Collaborative practice is the first legal model to articulate a structured, integrated interdisciplinary team approach as a central way of doing the work of family law. The benefits to clients are obvious, but the unexpected and remarkable aspect is how the discipline is transforming the way lawyers themselves understand and deliver conflict resolution services.”<sup>75</sup>

Collaborative law is not for everyone, but “is perfect for clients who recognize that maintaining a healthy relationship post-divorce is critical to themselves and the wellbeing of their children.”<sup>76</sup> Clients are choosing the collaborative process more and more and “many parents understand that those adversarial battles can damage the parenting relationship and damage the children, so many want to divorce without unnecessary conflict.”<sup>77</sup>

“When attorneys take the collaborative training or study conflict resolution skills, and actually make a paradigm shift to less adversarial ways of thinking,

---

<sup>74</sup> Uniform Collaborative Law Rules/Act (last revised or amended in 2010) with prefatory note and comments, [http://www.uniformlaws.org/shared/docs/collaborative\\_law/uclranducla\\_amendments\\_jul10.pdf](http://www.uniformlaws.org/shared/docs/collaborative_law/uclranducla_amendments_jul10.pdf), p. 12.

<sup>75</sup> Tesler, P., *Interdisciplinary Team Collaborative Practice: Transforming the Way Lawyers Understand and Deliver Conflict Resolution Services*, in: Fournier, E. (ed.), *Inside the Minds, Understanding Collaborative Family Law*, Thomson Reuters/Aspatore, 2011, p. 287.

<sup>76</sup> Harrington, T., *op. cit.* (note 45), p. 93.

<sup>77</sup> *Ibid.*

they bring a whole new set of skills to their divorce cases, which can cause the level of conflict in family law cases to recede.”<sup>78</sup>

That shift from the adversarial approach typical of litigation to the collaborative problem solving approach is a constant challenge to lawyers who practice consensual dispute resolution in family law matters.

## 6. CONCLUSION

The peculiarity of family law disputes arises from the specific nature of family relations from which their disputes arise. Family members are connected not only legally, but also by a strong emotional connection that is usually permanent, especially when it comes to the relationship between parents and children. Exactly that peculiarity of family relations, and consequent family disputes, have imposed the necessity of a different attitude towards the best possible way of resolving family disputes arising between family members by protecting family relations as much as possible.

Therefore, the importance and value of peaceful resolution of family law disputes as well as offering timely, expert advice to families in dispute was recognized on the level of international instruments, especially those accepted by the Council of Europe. An important role has been given to experts working with families, and especially to lawyers, to spread the model of resolving disputes whose main goal is to protect the benefit of the family.

We can therefore say that the traditional role that lawyers have in family law disputes has been changing recently, which can be confirmed by the experience of other legal systems in which the lawyers are the leading force of the new concept in resolving family law disputes.

They have made a significant contribution to more efficient and successful resolution of disputes, taking into consideration the basic principle of protecting the child’s best interests when it comes to the most sensitive family law disputes, which are those concerning children.

Family mediation, which may be considered to be a new institute provided by the Family Act 2015, has been presented as a new possibility to deal with family law disputes in the Croatian legal system. If we consider the experience from other countries, where the contemporary forms of family mediation have already been applied intensively, we can conclude that it can be very challenging for lawyers, but also that it can be a possible guideline in changing their approach to the parties in family law disputes.

---

<sup>78</sup> *Ibid.*, p. 94.

Positive examples for lawyers in Croatia could be experiences of their colleagues from other legal systems who are familiar not only with family mediation practice as an additional form of their activity, apart from the traditional one, but also with setting up completely new models of peaceful resolution of family law disputes by using their own knowledge and experience with the aim and wish to truly offer their clients the best possible help they require.

All the above said concerning the new trend in the perception of the role of lawyers in family law disputes confirms that consensual approaches to resolving those disputes should be strongly promoted with the aim of minimizing the detrimental consequences of family disruption and to support continuing relationships between family members, especially those between parents and their children. In that context, the role of lawyers is extremely important.

The interest of the child in such additional models of family dispute resolution must be a primary consideration for all involved, including lawyers.

## BIBLIOGRAPHY

- Acquah, D.; Sellers, R.; Stock, L.; Harold, G., *Inter-Parental Conflict and Outcomes for Children in the Contexts of Poverty and Economic Pressure*, Early Intervention Foundation, April 2017, [http://www.eif.org.uk/wp-content/uploads/2017/04/interparental-conflict-children-poverty-economic-pressure\\_April2017.pdf](http://www.eif.org.uk/wp-content/uploads/2017/04/interparental-conflict-children-poverty-economic-pressure_April2017.pdf) (01.03.2018).
- Berman, D.; Alfini, J., *The Future Of Court ADR: Mediation and Beyond: Lawyer Colonization of Family Mediation: Consequences and Implications*, Marquette Law Review, vol. 95, no. 3, 2012, pp. 887 – 925.
- Bryan, P. E., *Reclaiming Professionalism: The Lawyer's Role in Divorce Mediation*, in: Murphy, J. C.; Rubinson, R. (eds.), *Family Mediation: Theory and Practice*, LexisNexis, 2009, pp. 212 – 227.
- Cameron, N., *Collaborative Practice in the Canadian Landscape*, Family Court Review, vol. 49, no. 2, 2011, pp. 221 – 228.
- Cohen, D., *Making alternative dispute resolution (ADR) less alternative: the need for ADR as both a mandatory continuing legal education requirement and a bar exam topic*, Family Court Review, vol. 44, no. 4, 2006, pp. 640 – 657.
- Čulo Margaletić, A., *Mirno rješavanje obiteljskopравnih sukoba interesa (Peaceful Resolution of Conflict of Interest in the Area of Family Law)*, doctoral thesis, Faculty of Law, University of Zagreb, Zagreb, 2012.
- Degoldi, B., *Lawyers' Emerging Experiences of Interdisciplinary Collaborative Separation and Divorce*, Psychiatry, Psychology and Law, vol. 15, no. 3, 2008, pp. 396 – 414.

- DeMeo, R. A., *The Expanding Role of Collaborative Family Law*, in: Fournier, E. (ed.), *Inside the Minds, Understanding Collaborative Family Law*, Thomson Reuters/Aspatore, 2011, pp. 19 – 39.
- Freeman, M. B., *Moving towards a Collaborative Family Law Paradigm: The Struggle to Bring non-Litigious Divorce to the Masses*, *Child and Family Law Journal*, vol. 1, no. 1, 2013, pp. 27 – 44.
- Harrington, T., *Collaborative Law: A Paradigm Shift for Attorneys*, in: Fournier, E. (ed.), *Inside the Minds, Understanding Collaborative Family Law*, Thomson Reuters/Aspatore, 2011, pp. 91 – 113.
- Lande, J.; Herman, G., *Fitting the Forum to the Family Fuss, Choosing Mediation, Collaborative Law, or Cooperative Law for Negotiating Divorce Cases*, *Family Court Review*, vol. 42, no. 2, 2004, pp. 280 – 291.
- Lande, J.; Mosten, F. S., *Family Lawyering: Past, Present and Future*, *Family Court Review*, vol. 51, no. 1, 2013, pp. 20 – 27.
- Mosten, F. S., *Emerging Roles of the Family Lawyer: A Challenge for the Courts*, in: Singer, J.; Murphy, J. (eds.), *Resolving Family Conflicts*, Ashgate Publishing Limited, Aldershot, 2008, pp. 371 – 389.
- Schepard, A., *Children, Courts and Custody*, Cambridge University Press, Cambridge, New York, 2004.
- Schröder, R., *Familien-mediation*, Verlag Ernst und Werner Giesecking, Bielefeld, 2004.
- Tesler, P., *Interdisciplinary Team Collaborative Practice: Transforming the Way Lawyers Understand and Deliver Conflict Resolution Services*, in: Fournier, E. (ed.), *Inside the Minds, Understanding Collaborative Family Law*, Thomson Reuters/Aspatore, 2011, pp. 277 – 305.
- Tesler, P., *Collaborative Law, Achieving Effective Resolution in Divorce Without Litigation*, second edition, American Bar Association, 2008.
- Virk, R. L., *When is Collaboration the Most Appropriate Method of Dispute Resolution in Divorce, and Why Is It Beneficial to Collaborate?*, in: Fournier, E. (ed.), *Inside the Minds, Understanding Collaborative Family Law*, Thomson Reuters/Aspatore, 2011, pp. 79 – 91.
- Vu, T. D., *Going to Court As a Last Resort: Establishing a Duty for Attorneys in Divorce Proceedings to Discuss Alternative Dispute Resolution With Their Clients*, *Family Court Review*, vol. 47, no. 3, 2009, pp. 586 – 599.
- Westcott, J., *The Origins and Development of Family Mediation in the UK*, in: Westcott, J. (ed.), *Family Mediation: Past, Present and Future*, Family Law, Jordan Publishing Limited, Bristol, 2004, pp. 1 – 8.

- Wright, K., *The Evolving Role of the Family Lawyer: The Impact of Collaborative Law on Family Law Practice*, *Child and Family Law Quarterly*, vol. 23, no. 3, 2011, pp. 370 – 392.
- European Convention on the Exercise of Children's Rights, Official Gazette - International Agreements, Nr. 1/2010
- European Convention on Contact concerning Children, Official Gazette - International Agreements, Nr. 7/2008, 1/2009
- Family Act, Official Gazette, Nr. 103/2015
- Ordinance on Family Mediation, Official Gazette, Nr. 123/2015
- Family mediation and equality of the sexes, Committee on Equal Opportunities for Women and Men, Explanatory memorandum by Mrs Lydie Err, Rapporteuse, <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10341&lang=en> (01.03.2018)
- Ausbildungsordnung der BAFM für Familien-Mediation*, <http://www.bafm-mediation.de/mediationsausbildung/ausbildungs-richtlinien-der-bafm/ausbildungsordnung-der-bafm-fuer-familien-mediation/> (10.02.2018)
- Training Standards of the European Forum for Research and Training in Family Mediation and Mediation, <http://www.forumeuropeen.eu/committee-members-of-standards/training-standards/?lang=en> (20.09.2017)
- Parkinson, L. *Training for Family Mediation – a Glance Across Europe*, [http://www.themediationcentre.co.uk/cms/document/Training\\_for\\_family\\_mediation.pdf](http://www.themediationcentre.co.uk/cms/document/Training_for_family_mediation.pdf) (15.02.2018)
- Family Law Code of Practice, Law Society of Ireland, <https://www.lawsociety.ie/globalassets/documents/committees/family/family-law-handbook-2017.pdf> (22.02.2018)
- Best Practice Guidelines for lawyers doing family law work (2nd edition) prepared by the Family Law Council and Family Law Section of the Law Council of Australia, <https://www.familylawsection.org.au/resource/BestPracticeGuidelinesv8FINAL.pdf> (02.03.2018)
- The Uniform Collaborative Law Rules/Act, <http://www.uniformlaws.org/Act.aspx?title=Collaborative%20Law%20Act> (01.03.2018)
- Uniform Collaborative Law Rules/Act (last revised or amended in 2010) with prefatory note and comments, [http://www.uniformlaws.org/shared/docs/collaborative\\_law/uclranducla\\_amendments\\_jul10.pdf](http://www.uniformlaws.org/shared/docs/collaborative_law/uclranducla_amendments_jul10.pdf) (01.03.2018)



## Sažetak

Doc. dr. sc. Anica Čulo Margaletić\*

## ULOGA ODVJETNIKA U OBITELJSKOPRAVNIM PRIJEPORIMA

*Polazeći od toga da odvjetnici često prvi dolaze u kontakt s obiteljima u kojima postoji neki oblik prijepora važno je preispitati njihovu ulogu i mogućnosti u usmjeravanju stranaka k drukčijim i prikladnijim načinima rješavanja sporova obiteljskopravne naravi. Naime, neizostavna uloga odvjetnika u razvoju kulture mirnog rješavanja te vrste prijepora prepoznata je i u međunarodnim dokumentima usvojenima poglavito na razini Vijeća Europe. Izmijenjeni pristup u rješavanju obiteljskopравnih prijepora prihvaćen je u suvremenim pravnim sustavima te je pridonio očuvanju kvalitete obiteljskih odnosa, pozitivnijem pogledu na odvjetnike i njihovu ulogu u rješavanju konflikta i, na kraju, što je ujedno i najvažnije, boljem ostvarenju načela zaštite najboljeg interesa djeteta. U radu će se stoga prikazati novi trend u poimanju uloge odvjetnika u prijeporima obiteljskopравne naravi polazeći pritom od prepoznatih posebnih obilježja takvih prijepora i njihove prikladnosti za mirno rješavanje. Rad će također sadržavati pregled novih načina mirnog rješavanja obiteljskih prijepora koje su kroz svoj rad razvili odvjetnici te u kojima oni aktivno sudjeluju sa svojim strankama.*

*Ključne riječi: obiteljskopравni prijepori, odvjetnici, djeca, obiteljski odnosi, collaborative law*

---

\* Dr. sc. Anica Čulo Margaletić, docentica Pravnog fakulteta Sveučilišta u Zagrebu, Trg Republike Hrvatske 14, Zagreb; aculo@pravo.hr;  
ORCID ID: orcid.org/0000-0001-7688-8366

