

Building a Family Law Practice

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A reflection on an afternoon with Forest "Woody" Mosten

"Collaborative law is unsuited for big money cases."

How would you describe someone who made such a statement? Sadly misguided is how I would describe anyone who decries this further method of *Appropriate* (as opposed to *Alternative*) Dispute Resolution, or Consensual Dispute Resolution, as these settlement methods can be labelled. Collaborative law, together with its sister co-operative law, stands proudly in the ranks of Primary Dispute Resolution.

Collaborative law will involve both parties and their lawyers settling matters consensually round a table. They will contract in a binding manner not to go to court. Co-operative law is equivalent, save that the parties have the bolt-hole of litigation if they need it.

Whether it is appropriate, primary or consensual, collaborative and co-operative law are fast becoming the best ways of resolving family law predicaments. Whether the matter relates to pre-marital or post-marital contracts, or the consequences of separation or divorce on the relationships of family members, and their financial ramifications, collaborative law finds kind answers and sympathetic solutions.

So was Woody Mosten's talk to 30 collaborative lawyers in February 2010 simply a case of preaching to the converted? And how could this experienced Californian collaborative lawyer help us build our family law practices?

Developing your signature

- Think what kind of legacy you want to leave as a family lawyer.

- Are you, akin to a Japanese Salaryman or Salarywoman, interested only in turning up, going through the motions and taking the pay cheque at the end of each month?
- Or do you want to develop your own style, a style that convinces customers and clients and all other users of your services?

A peace-making signature

Mosten used the word "peace-making" 26 times in the three hour seminar. This approach will not attract the litigator. Nor obviously will it be suitable for every family case we do, as one size does not fit all. But Mosten has every right, built on 38 years profitable experience, to explain the recipe for his own success. And it will be a cynical professional who derides the objective of making peace in family environments.

Developing client-friendly strategies

- You are likely to find success as a family lawyer if you are attentive to what a client wants.
- Most clients seeking advice in family situations do want to find "peaceful" or amicable solutions.
- Most clients do not want or need to spend a fortune on their lawyers.
- Clients want empathetic and practical lawyers who seek and find solutions.

Dating and the introduction of new partners

So Mosten has, for example, written a guide on how a separated client should deal with going out with new boyfriends and girlfriends – on how those new relationships will inevitably impinge on the left-behind spouse and the effect of all this on the minor children. It's obviously something that all our clients are going to be interested in.

Strategies in the practitioner's toolkit

Mosten has 215 different strategies in his toolkit to deal with family cases. The more strategies you have that assist unblock a case, the more likely you will be in attracting clients and building a successful practice.

Transforming the lives of the people you work with and winning more clients

Mosten does not have a secretary; or that ghastly modern parlance "personal assistant". Instead, he has a dispute resolution assistant. Think about it.

Dignity of the process

As is well known, collaborative and co-operative law assures the privacy of the process and can you think of anything more uncomfortable for clients than negotiating in the fevered atmosphere of a corridor of a court, with the clock ticking towards the time that you appear in front of a judge? And the attendant unpredictability of outcome and the taximetering of solicitors' and barristers' time?

Profitability

Can a collaborative practice be profitable? The answer is a clear Yes.

A "whole" look at a client

Standing back from litigation and acting collaboratively in problem-solving also opens awareness for fee earners beyond mere family law advice. So you will necessarily be thinking (if not advising) about all manner of other aspects. A client's Will, current tax position, domicile, residence, tax consequences of transfers, and of maintenance payment in a case involving Americans. There are many options available for the astute modern family lawyer. So Mosten points his finger away from the easy path of litigation to a more whole way of looking after the client.

Use of collaborative law for the creation of pre-marital and post-marital contracts

Much of Mosten's caseload is the negotiation of marital contracts. This is a field of law that is very appropriate for a collaborative and co-operative style. Many of us will have presided over pre-marital cases in which the negotiation has proved a bridge too far for fiancés. Marriages can crumble under the weight of financial bargaining even before they have started. Isn't it obvious that getting round a table with both solicitors and clients will be the most efficient and friendly way of getting to where you want to go?

Board of Directors

One of Mosten's pearls of wisdom was that every practitioner should have her or his own Board of Directors. To guide,

advise, mentor and direct. Many of us in partnership will, or should, have an appropriate edifice of support. But I warm to Mosten's theme of there being objective wise men and women to look over your shoulder and to keep you on track.

So are there too many items in the shop window

Mosten was asked whether the client was going to be confused with the multiplicity of methods of dispute resolution. Are there too many tools in the toolkit? Absolutely not. The wise practitioner will absorb the various avenues of dispute resolution and present the most benign combination of approaches to the unique family situation that each case presents.

Beware of orthodoxy in the system. I happen to think that collaborative law is almost equivalent to co-operative law; and I really don't care how many people disagree. All that matters is there is an objectively successful resolution. Dare to be different.

And finally

Each generation of family lawyers improve the system. History teaches how the environment improves as time goes by. So we have advanced:

- To legal remedies being available to both husbands and wives.
- To the creation of a system of dealing with family law situations according to a code resulting in amicable approaches (SFLA/Resolution).
- To mediation in all family matters.
- To legal remedies for same-sex couples in civil partnerships.
- To collaborative and co-operative approaches to problem-solving, such that, frankly, the court system has become inappropriate for most conventional cases. We should be honest enough to admit it. And brave enough to travel down its paths.

To Forest "Woody" Mosten, I say thank you.