

Lawyer as Peacemaker: Building a Successful Law Practice Without Ever Going to Court

FORREST S. MOSTEN*

I. Introduction

For my first quarter century of law practice, I led two lives. Although I developed a growing mediation and unbundling practice, I also served as a soup-to-nuts family lawyer,¹ which meant that I represented clients in adversarial court proceedings. Much like Canadian peacemaker, Nancy Cameron, I felt that I was a rider of two horses:

* Forrest “Woody” Mosten has been a mediator in private practice since 1979 in Los Angeles, is a certified family law specialist and collaborative attorney, is an adjunct professor of law at UCLA, teaches at Pepperdine, and Hamline Schools of Law and can be reached at www.mostenmediation.com. I wish to acknowledge my wife, Jody, whose support and ideas are evident in all my writing; Robin Shofner, UCLA law student; Rebecca Smith, my conflict resolution assistant, who helps me live out my vision in my law and mediation practice; Nan Waller Burnett, whose inspirational writing and teaching collaboration have enhanced my appreciation for spiritual peacemaking; and my UCLA faculty colleagues Russell Korobkin and Sung Kim, whose ideas and insights at a Sow Ear’s seminar served as an incubator for many of the concepts in this article. I am grateful to Jean Crowe who invited me to write for this issue. Finally, I would like to express special appreciation to Linda Elrod, long-time editor of the *Family Law Quarterly*, who has inspired many authors to give more than their best in building *FLQ* to a first-class leading publication of legal scholarship in the field of family law. Almost two decades ago, Linda gave this fledgling author a break in permitting me to publish my crazy idea of unbundling legal services in the article, *Unbundling of Legal Services and the Family Lawyer*, 28 *FAM. L. Q.* 421 (1994). The article was a call to combine a consumer-oriented approach to legal access and dispute resolution in a single article that resulted in an unbundling movement that neither Linda nor I envisioned.

1. I refer to family law cases and divorce cases interchangeably, meaning matters involving marital dissolution or separation, paternity, guardianship, termination of parental rights, delinquency, and child-in-need-of-services (CHINS) cases. I recommend that the names of parties or mother and father always be used rather than the impersonal adversarial legal terms, Petitioner/Respondent or Plaintiff/Defendant. *See Up to Parents, A Brief Introduction to a Cooperative System of Family Law* (2008), available at <http://www.uptoparents.org/files/UpToParentsAndCooperativeFamilyLawSystems.doc>.

I have often thought of this dual role of conflict resolver and courtroom advocate as akin to being asked to ride two horses. . . . At some point to remain riding it will be necessary to commit to one horse or the other. The difference between the skills I bring as a collaborative practitioner and those I used settling within a litigation template is the difference between riding one horse rather than two.²

Approximately a decade ago, I decided to focus totally on peacemaking and refuse any further litigation. While I was afraid that I would eat tuna casserole four times a week, with the support of my wife, I turned down large retainers and referred all potential court clients to competent litigators in my community. My practice is now divided roughly into two equal parts. I serve as a neutral mediator fifty percent of the time, and the other half is composed of four representative roles: client representative during mediations presided over by other neutrals (often with a litigator co-counsel); collaborative lawyer; unbundled lawyer for self-represented parties; and transactional lawyer who builds relationship agreements, such as premarital, postmarital, cohabitation, and handles other matters involving long-range relationships, such as business partnerships, probate disputes, and adoption and surrogacy agreements. Rather than resulting in a financial disaster, my decision to be a noncourt family lawyer resulted in rapid growth of my practice, beyond my most optimistic expectations. My gross receipts increased by over thirty-three percent during my first year of noncourt practice, and uncollectable fees went down from thirty percent of gross billables to two percent.

The financial benefits, though important, pale in comparison to the joy and rejuvenation I feel towards practicing family law. Although I am over sixty years old, I get up in the morning ready to run to the office. I cannot imagine retiring from law practice. Remounting the one horse of “non-litigation,” It is not only possible, but personally and professionally rewarding, to serve as a lawyer. What I do day after day is to work for peace for my clients and their families, and I have become increasingly comfortable with my role as peacemaker. I understand that many family lawyers might find it strange to bundle the roles of peacemaker and family lawyer together. My message is that peacemaking is exactly the work many of us perform already.

In daily law practice, threats of going to court or initiating litigation are integrally woven, even though more than ninety-five percent of court actions eventually settle. This means that five percent of cases drive the system for the other ninety-five percent of divorcing families. While most family lawyers are polite and cordial to each other and to opposing par-

2. NANCY CAMERON, *COLLABORATIVE PRACTICE: DEEPENING THE DIALOGUE* 66, 97 (2004).

ties, our mindset is generally competitive and adversarial.³ Ad hominem attacks, accusations, and compromising facts included in court affidavits, remain in the public record—sometimes for decades.

In her monumental book, *The New Lawyer*,⁴ Julie MacFarlane identifies the three professional beliefs that are the bedrock of traditional lawyers' thinking: a *rights-based orientation*, a *confidence* that courts will produce the best justice for clients, and a *mind-set* that lawyers should be in charge. MacFarlane finds that these beliefs result in a system that is not only inefficient, but also creates a disempowerment of clients in favor of their lawyers:

A rights-based model of dispute resolution assumes that lawyers acquire some form of ownership—not simply stewardship—of their client's conflicts as a consequence of their professional expertise. . . . Client goals are reframed where necessary to fit a theory of rights. . . . This assumption of ownership by lawyers is both practical and emotional. Only certain types of client input, which are deemed to be relevant to building a strong legal argument, are sought.⁵

MacFarlane's findings are consistent with the seminal law review article that argues that lawyers "bargain in the shadow of the law."⁶ Lawyers who practice within an adversarial paradigm are often myopic in their advice to clients by limiting problem definition to what the "law" proscribes and framing the terms of settlements around what might happen in court.⁷ The professional literature and media are overwhelmed with negative accounts by family law clients who complain about the legal system and their lawyers. A peacemaking approach can lead to greater client satisfaction largely because it is consumer-driven and takes into account the long-term needs of the family, fueled by a positive motivation of trying to help our client heal, improve family harmony, and prevent future strife.⁸

3. "Akin to concerns about dropping the shield of vented anger, lawyers resist mindfulness and other emotionally-rooted concepts with a 'knee-jerk tendency to fall back on adversarial solutions to most, if not all, issues and problems.'" Don Ellinghausen, Jr., *Venting or Vipassana?: Mindfulness Meditation's Potential for Reducing Anger's Role in Mediation*, 8 CARDOZO J. CONFLICT RESOL. 63, 73 (2006) (quoting STEVEN KEEVA, TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE 49 (1999)).

4. JULIE MACFARLANE, *THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW* (2008).

5. *Id.* at 61–62.

6. Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law*, 88 YALE L.J. 950, 968 (1979).

7. Leonard Riskin & Nancy Welsh, *Is That All There Is?: "The Problem" in Court-Oriented Mediation*, 15 GEO. MASON L. REV. 863, 863–932 (2008).

8. The 1995 ABA Comprehensive Legal Needs Study found that consumers actually have very high satisfaction with their lawyers until their case goes into litigation. See Nobel Committee's Statement awarding U.S. President Barack Obama the 2009 Nobel Peace Prize:

Dialogue and Negotiations are preferred instruments for resolving even the most difficult

II. Evolution from Adversarial Advocacy to Peacemaking

A. *What Is a Peacemaker?*

A peacemaker is “one who makes peace, especially by reconciling parties in conflict.”⁹ Reconciliation is defined as restoring or creating harmony in the family.¹⁰ Family lawyer peacemakers come from all backgrounds, have very diverse personalities, and offer services ranging from litigator to parent educator. Being a peacemaker is not defined by what role one plays in helping families but by how one provides reconciliation and harmony in interactions with clients, colleagues, opposing parties, children, and other members of the family, judges, court staff, witnesses, experts, and many others. In other words, the core values that the lawyer brings to work as a family lawyer define whether one is a peacemaker.¹¹

As healers, we can use our compassion to demonstrate a genuine concern for everyone we touch in our work. Peacemakers try to suspend judgment and try to help clients and others heal without dictating in what form the healing may be received so that we are not caught up by anxiety, by being results-obsessed as to whether our efforts bear fruit.¹²

In her book, *Calm in the Face of the Storm*, Nan Waller Burnett states:

As peacemakers, we become the maestros of the orchestra as the parties dance the conflict at our table. Listening is our highway to solutions, our treasure hunt for answers to the validation of their souls. A practitioner who can tap into the language, the underlying cries for help of one to another, has the best capability to assist them on their path out of pain and into understanding. . . .¹³

Another approach to peacemaking is the discipline of “mindfulness,” developed by mediation pioneer, Professor Leonard Riskin.¹⁴ Mindfulness

[International] conflicts . . . [President Obama’s] diplomacy is founded in the concept that those who are to lead the world must do so on the basis of values and attitudes shared by the majority of the world’s population.

Nobelprize.org. The Nobel Peace Prize 2009.

9. Merriam Webster Dictionary Online, <http://www.merriam-webster.com/dictionary/peacemakers>.

10. *Id.*

11. See generally Richard L. Abel, *Law Books and Books About the Law*, 26 STAN. L. REV. 175, 175–228 (1973) (reviewing MAX RHEINSTEIN, *MARRIAGE STABILITY, DIVORCE, AND THE LAW* (1972)) (utilizing his blended social-science–legal background to discuss the role of personal values and assumptions in one’s approach toward divorce).

12. Lois Gold, *Mediation and the Culture of Healing*, in BRINGING PEACE INTO THE ROOM: HOW THE PERSONAL QUALITIES OF THE MEDIATOR IMPACT THE PROCESS OF CONFLICT RESOLUTION 194 (Daniel Bowling & David Hoffman eds., 2003) (quoting H. Prather, *Love Is Healing*, in HEALERS ON HEALING (R. Carlson & B. Shield eds., 1989)).

13. NAN WALLER BURNETT, *CALM IN THE FACE OF THE STORM* xii (2007). See also F. GREGORY COFFEY & MAUREEN KESSLER, *THE REFLECTIVE COUNSELOR: DAILY MEDITATIONS FOR LAWYERS* (2008); BRINGING PEACE INTO THE ROOM, *supra* note 12.

14. Riskin defines mindfulness as: “Mindfulness . . . means being aware, moment to

concentrates on the personal evolution of lawyers to better do our jobs by acquiring compassion, helps us provide professional distance so that we do not get caught up in the emotions and reactivity of our clients, and frees us from habitual mindsets that hinder our creativity in negotiation or in the courtroom.¹⁵

Peacemakers try not to carry grudges against others or against ourselves. We should be open to offering apology to those whom we have hurt or who feel hurt by us, regardless of “who is right.” At the same time, we must be willing to accept the apology of others, regardless of how inartfully delivered, or even if we doubt the motives or integrity of the person offering an apology. Peacemakers also try to be humble and strive for authentic connectedness with clients, opposing counsel, and others.¹⁶

The evolution from adversarial advocacy toward a more client-centered approach to our work is well underway. Many family law practitioners are already utilizing peacemaking as a permanent part of their work.

B. Comprehensive Law Movement

In her groundbreaking 2006 article, Professor Susan Daicoff discusses how a “comprehensive law movement” relates peacemaking as the lens through which an attorney views clients and their problems.¹⁷ Family law has already begun the evolution away from the traditional adversarial role towards peacemaking. Daicoff cites three models of the comprehensive

moment, without judgment, of one’s bodily sensations, thoughts, emotions, and consciousness. It is a systematic strategy for paying attention and for investigating one’s own mind that one cultivates through meditation and then deploys in daily life.” Leonard L. Riskin, *Mindfulness: Foundational Training for Dispute Resolution*, 54 J. LEGAL EDUC. 79, 83 (2004) (citing Jon KABAT-ZINN, *FULL CATASTROPHE LIVING* (1990)). See also JOSEPH GOLDSTEIN, *INSIGHT MEDITATION: THE PRACTICE OF FREEDOM* (1993).

15. Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, 7 HARV. NEGOT. L. REV. 1, 30 (2002). See also ROBERT H. MNOOKIN ET AL., *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 56, 203 (2000); Robert S. Adler & Elliot M. Silverstein, *When David Meets Goliath: Dealing with Power Differentials in Negotiation*, 5 HARV. NEGOT. L. REV. 1, 59–60 (2000); Clark Freshman et al., *Adapting Meditation to Promote Negotiation Success: A Guide to Varieties and Scientific Support*, 7 HARV. NEGOT. L. REV. 67, 77 (2002) (citing Leigh Thompson & D. Hrebec, *Lose-Lose Agreements in Interdependent Decision Making*, 120 PSYCHOL. BULL. 396 (1996) (“Mindful negotiation training could include training people to label positional impulses as they arise rather than acting on them. Existing meta-analyses suggest negotiators fail to identify opportunities for tradeoffs in nearly half of their negotiations. Training negotiators to note a ‘competing impulse’ before rejecting a potential tradeoff may cut this tendency substantially.”)).

16. Jacqueline Nolan-Haley, *Finding Interior Peace in the Ordinary Practice of Law: Wisdom from the Spiritual Tradition of St. Teresa of Avila*, 44 J. CATHOLIC LEGAL STUD. 29, 39 (2007).

17. Susan Daicoff, *Law as a Healing Profession: The “Comprehensive Law Movement,”* 6 PEPP. DISP. RESOL. L.J. 1, 50–51 (2006).

law movement that are already part of many lawyers' practices:¹⁸

Therapeutic Justice (TJ): TJ is the use of social science to study the extent to which legal practice promotes the psychological or physical well being of the people it affects, including the effect on lawyers.¹⁹ Recognizing the importance of both substantive and therapeutic concern, TJ urges lawyers to work for both a desired legal and therapeutic goal for clients.

Holistic Lawyering (HL): HL is based on spiritual growth for both client and lawyers. Holistic lawyers reflect and work to enhance their own personal values and are clear that professional work should enhance rather than conflict with those values.²⁰

Restorative Justice (RJ): Although it is often used in the criminal setting, RJ attempts to restore the relationship between the offender and the community and to establish harmony through the use of dialogue and negotiation. Future problem solving is seen as more important than simply establishing blame for past behavior.²¹

C. The Law Practice

Departing from the traditional adversarial paradigm and building on the foundation of the Comprehensive Law Movement, there are many aspects of peacemaking currently active in family law practice. Peacemaking goals and strategies can be present within the full-service lawyer-client relationship, or within innovative limited-scope service models to expand legal access.²² Peacemaking strategies can frame interactions with clients, among parents and children,²³ between family lawyers representing different parties, between lawyers and other professionals, and within the organized family law profession. I will discuss just four common aspects of peacemaking: negotiation and problem solving, reduction or elimination, and of threats and blame, commitment to an interdisciplinary approach,

18. Professor Daicoff labels these models "vectors." The additional comprehensive law vectors of collaborative law, creative problem solving, and preventive law are integral parts of family law peacemaking services and are discussed later.

19. Daicoff, *supra* note 17, at 11 (citing TJ founders David Wexler and Bruce Winick, who quote the definition of TJ as proposed by Christopher Slobogin). See generally Cutting Edge Law, www.cuttingedgelaw.com (last visited Sept. 28, 2009). This innovative website, created by J. Kim Wright, offers a wealth of information on TJ and other new lawyer models including collaborative practice, problem solving strategies and courts, holistic law, integration of law, politics and spirituality, and lawyer as coach. The site includes video, interviews, blogs, and other materials.

20. See generally International Alliance of Holistic Lawyers, www.iah.org (last visited Sept. 29, 2009).

21. Daicoff, *supra* note 17, at 33.

22. See DEBORAH L. RHODE, ACCESS TO JUSTICE (2004); LAWYERS: A CRITICAL READER (Richard L. Abel ed., 1997).

23. See ANDREW SCHEPARD, CHILDREN, COURTS, AND CUSTODY: INTERDISCIPLINARY MODELS FOR DIVORCING FAMILIES (2004).

focusing on the future for comprehensive resolution, and explicit adoption of peace and harmony as bedrocks of family law practice.

1. NEGOTIATION AND PROBLEM SOLVING

The best family lawyers have already evolved beyond the confines of the traditional paradigm to incorporate interest-based negotiation and creative problem-solving approaches to even the most toxic, conflictual, and complex matters. Referral sources understand that these experienced lawyers will often use the Daicoff lawyer lens to work out confidential negotiated settlements that can avoid the public glare of an adversarial court filing.²⁴

Courts have taken the lead in recommending the use of negotiation and problem-solving techniques to law parties. The following excerpt is from a letter that the supervising judge of the Family Department of Los Angeles sends to every family law party:

... However, going to court is not the only way to resolve disputes. Some other ways include having attorneys negotiate directly; having a neutral third party help both sides negotiate a solution (mediation) or using a problem solving method such as collaborative law. These other ways help people find solutions that are mutually acceptable. You can speak with your attorney, if you have one, about these options so the two of you can decide whether any of these are right for you.²⁵

2. ELIMINATE OR REDUCE THREATS AND BLAME

Blame is seen as a “no-win” game—in fact, the seminal best-seller *Getting to Yes* is responsible for the now well-known concept “win-win.”²⁶ The skills of active listening and acknowledging the emotions of

24. See MACFARLANE, *supra* note 4; RUSSELL KOROBKIN, *NEGOTIATION THEORY AND STRATEGY, AN INTERDISCIPLINARY APPROACH* (2d ed. 2009); BARRY GOLDMAN, *THE SCIENCE OF SETTLEMENT: IDEAS FOR NEGOTIATIONS* (2009); CHRISTOPHER HONEYMAN, JAMES COBEN & GUISEPPE DE PAOLO, *RETHINKING NEGOTIATION TEACHING* (2009). The publicized debacle that occurred in the Ron and Janet Burkle divorce reinforced the trend to negotiate and problem solve first, second, and last—keeping the matter out of court for the benefit of everyone in the family. After winning a battle affirming a premarital agreement that permitted Mr. Burkle to pay only \$40 million to Janet, and after friendly state legislators rammed through a bill modifying and easing the burden to seal or return financial documents filed in court, the California Court of Appeals sustained the position of the *Los Angeles Times* that the First Amendment freedom of the press trumps (no pun intended) the rights of parties to privacy. This decision and subsequent release of a flood of private and sensitive financial documents to awaiting blogs have increased the referrals to mediation and collaborative practitioners. See *Burkle v. Burkle*, 37 Cal. Rptr. 3d 805 (Ct. App. 2006).

25. This letter was drafted by Hon. Aviva Bobb, former Presiding Judge of the Family Law Department of the Los Angeles Superior Court. The full text of this letter can be obtained through the Family Law Department, Los Angeles Superior Court, 111 North Hill Street, Los Angeles, California.

26. ROGER FISHER, WILLIAM URY & BRUCE PATTON, *GETTING TO YES* (1991).

the other party as well as developing and exploring options (brainstorming) are concepts that the best lawyers use, not just in negotiation over settlement terms, but with their clients, staff, and even in court in both their examination of witnesses and arguments to judicial officers. Peacemakers strive to refrain from the use of threats and blame. Most collaborative participation agreements consensually bar either the use of court or the threats of using court.²⁷

3. INTERDISCIPLINARY APPROACH

The field of family law has long recognized the importance of learning from and incorporating interdisciplinary approaches to better serve our clients. We have learned from the mental health field about child development, communication strategies, and how these professionals can treat, evaluate, testify, and otherwise contribute to the resolution of family law matters. We learn from and utilize the services of accountants, financial planners, actuaries, real estate appraisers, and others.

4. VALUING PEACE AND EMPOWERMENT FOR LAWYERS AND CLIENTS

Just as the absence of war is not peace, helping people get divorced without litigation does not make one a peacemaker. Noted family practitioner David Hoffman and his co-author, Daniel Bowling, contend that “When we are feeling at peace with ourselves and the world around us, we are better able to bring peace into the room.”²⁸ Professor Jacqueline Nolan-Haley notes that lawyer training for self peace is underway and in the best interests of the profession and the clients we serve.²⁹

5. MARKERS OF A PEACEMAKER

There are several identifying markers of peacemaker lawyers:³⁰

- a. *The quality of relationships with clients.* Has the lawyer proactively encouraged rapport and emotional support outside of the technical professional discussion of the legal issues involved?
- b. *The importance of clients’ return to wholeness.* Does the lawyer encourage clients to bring back into balance what has fallen out of balance in their lives whether it is time for themselves, with their children, or being of service to their community?

27. See Participation Agreements and Collaborative Guidelines and Principles, <http://groups.yahoo.com/group/CollabLaw/files/Practice>; see also ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (1990); Scott R. Peppet, *Mindfulness, the Law and ADR: Can Saints Negotiate?*, 7 HARV. NEGOT. L. REV. 83 (2002).

28. See BRINGING PEACE INTO THE ROOM, *supra* note 12, at 14.

29. Nolan-Haley, *supra* note 16, at 35.

30. The following discussion and questions about healing are adapted from Gold, *in* BRINGING PEACE INTO THE ROOM, *supra* note 12.

- c. Helping clients find and listen to their higher intelligence and inner wisdom.* Is the lawyer committed to helping clients bring their best selves forward, even when they have been compromised by the adrenalin and stress of conflict? Does the lawyer go beyond asking clients to be reasonable and logical to help them find their wisdom?
- d. Stimulating a healing attitude and hope.* Does the lawyer believe that change is possible and that the lawyer (as well as the client) are working toward a better future? Does the lawyer have a sense that this hope gives both the lawyer and client energy?

If these concepts feel familiar, then it is likely that the lawyer is already incorporating peacemaking values into the practice of law. Perhaps the lawyer may wish to extend the scope of her own approach to her clients by offering new peacemaking services as part of her existing practice.

III. Peacemaking Services for Family Law Clients

Utilizing the concepts explored earlier, the balance of the article will focus on peacemaking services that can immediately be added to a family law practice. I will discuss the roles of client advisor, litigator, mediator, mediation party's representative, unbundled coach for pro se parties, collaborative lawyer, and preventive legal and conflict wellness provider.

A. Client Advisor as Peacemaker

The foundation of every lawyer's role is that of advisor, counselor, and interviewer. As interviewers, we gather needed information to assist decision making and provide factual support for our clients' positions. As legal counselors, we help our clients generate and explore options based on legal and nonlegal factors and then select from among options to make the best possible decisions. As advisors, we use our knowledge and experience to recommend what steps to take and how best to take them.³¹

31. For an excellent primer on client-centered lawyering, see DAVID BINDER, ET AL., *LAWYERS AS COUNSELORS: A CLIENT CENTERED APPROACH* (2d ed. 2004). Also see THOMAS L. SHAFFER & JAMES R. ELKINS, *LEGAL INTERVIEWING AND COUNSELING* (1997); Clark D. Cunningham, *Evaluating Effective Lawyer-Client Communication: An International Project Moving from Research to Reform*, 67 *FORDHAM L. REV.* (SPECIAL ISSUE) 1959, 1959-86 (1999); *Effective Lawyer Client Communication: An International Project to Move from Research to Reform*, <http://law.gsu.edu/Communication> (last modified May 27, 2008). Also useful is the ICCC Assessment and Feedback Form, the standards for the Louis M. Brown International Client Counseling Competition, <http://www.clientinterviewing.com/iccc/ICCC%20Assessment%20&%20Feedback%20Form.doc>, which cover best practices in client counseling:

- Establishing an Effective Professional Relationship
- Obtaining Information
- Learning the Client's Goals, Expectations and Needs
- Legal Analysis and Giving Advice
- Developing Reasoned Courses of Action (Options)

The first step for a peacemaker is to provide informed consent to the client about the process option to be used. This should take place as early in the relationship as possible and include a detailed discussion of the roles the lawyer can play and choice of processes that can be selected.³² Before writing a demand letter or filing a court action, it is best practice for the lawyer to explain what other nonlitigation process options are available. If the lawyer is not qualified or chooses not to offer other process options that are available in the community, discuss these and provide resources, referrals, or, at least, recommend that the client find out more about these other service models.

Most family lawyers are well versed in the positives and negatives of litigation and negotiated settlement. A peacemaker should proactively provide a more comprehensive and nuanced explanation of the following additional options:

1. CLIENT SELF-RESOLUTION

If the client decides not to actively pursue a particular position, there is no need for any further action because the matter is resolved. By taking a claim off the table due to reflective self-interest (rather than giving in or taking the route of appeasement), a client may be making the best decision of her life.³³

2. PARTY-PARTY RESOLUTION

Almost every judge beseeches parties to go out in the hall and settle

-
- Assisting the Client to Make an Informed Choice
 - Effectively Concluding the Interview
 - Ethical and Moral Issues
 - Post Interview Reflection

32. ROBERT F. COCHRAN, JR., JOHN M. A. DIPPIA & MARTHA M. PETERS, *THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING* (2d ed. 2006); THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* 200 (2d ed. 1994); Robert Cochran, *Educating Clients on ADR Alternatives: The Rules of Professional Conduct Should Require Lawyers to Inform Clients About ADR*, L.A. LAW., Oct. 2002, at 52; Robert F. Cochran, Jr., *Professional Rules and ADR: Control of Alternative Dispute Resolution Under the ABA Ethics 2000 Commission Proposal and Other Professional Responsibility Standards*, 28 FORDHAM URB. L.J. 895 (2001); J. Lande & F.S. Mosten, *Collaborative Lawyers' Duties to Screen the Appropriateness of Collaborative Law and Obtain Clients' Informed Consent to Use Collaborative Law*, OHIO ST. J. ON DISP. RESOL. (forthcoming 2010), available at <http://ssrn.com/abstract=1373165> (abstract); F.S. Mosten, *Collaborative Law Practice: An Unbundled Approach to Informed Client Decision Making*, 2008 J. DISP. RESOL. 163.

33. See J. EDELMAN & M. B. CRAIN, *THE TAO OF NEGOTIATION: HOW YOU CAN PREVENT, RESOLVE, AND TRANSCEND CONFLICT IN WORK AND EVERYDAY LIFE* (1993). Louis M. Brown, Father of Preventive Law, frequently wrote that more decisions are made in the law offices worldwide than in all the courts, legislatures, and administrative bodies combined. These decisions have precedential impact on the client's life and everyone in his or her family.

their case themselves rather than turn over their family decisions to a judicial stranger. Peacemakers have great deference to the wisdom and capabilities of their clients and respect for the other party as well. Before having a client engage the lawyer's professional services, consider suggesting the client invite the other party to sit down for a cup of coffee and try to work out the problem themselves. The lawyer's support and coaching of the client can instill confidence to overcome fear and resistance to give these challenging conversations a try.

3. LAWYER-LAWYER RESOLUTION

In my early days as a lawyer, most of my cases settled when the other lawyer and I sat down without our clients and worked out the deal. As a peacemaker, the lawyer can still offer this option. The lawyer can display empathy and support for the client's desire for conflict avoidance and the client's informed choice to use the lawyer as a buffer—even if the lawyer favors having the parties more actively involved.

4. FOUR-WAY SETTLEMENT CONFERENCE

The lawyer can offer this familiar option with a peacemaker perspective. Being sensitive to the possibilities of future reconciliation and healing, the two lawyers can work together to encourage direct client communication and clients' opening statements, reduce hyper-technical legal language and eliminate lawyer war stories or self-aggrandizing statements. The lawyer can make affirmative statements about the commitment to having parties in control of their family decisions and willingness to subordinate legal rights and financial gain in favor of another standard: "Can I live with the settlement?" While it is entirely proper for the lawyer to inform the client as to what is being left on the table (and protect against liability), as a peacemaker, consider supporting a peacemaking approach to this traditional process choice of a four-way meeting.

5. COLLABORATIVE SETTLEMENT CONFERENCE

This may look very much like a traditional four-way settlement conference—but is very different. As a peacemaker, the mission is to explain the benefits and costs of signing a disqualification clause, explain different models of collaborative practice, and how the other party might react in a collaborative settlement compared to other process options. If the lawyer is not trained in collaborative practice or offers only one model of collaborative practice, which might not be appropriate in the client's situation, part of the peacemaker approach is to share information about other lawyers in the community who might offer other collaborative models for the client. In essence, the lawyer is "unbundling" the roles of advisor and

service provider to ensure the client's fully informed and empowered decision making.³⁴

6. MEDIATION

As there are many models of mediation and different mediators with a range of abilities and perspectives, the lawyer's peacemaker responsibility is to explain this menu of mediation possibilities in the courts, in private, and in nonprofit sectors. If the lawyer invests in mediation training, it will enhance the information and support the lawyer can provide for clients to consider mediation early and seriously.

B. Litigator as Peacemaker

While many clients come to us seeking justice that they believe only a ruling from a judge can provide, every experienced lawyer knows how expensive, time consuming, emotionally challenging, and uncertain in result that litigation can be. Despite these downsides, the public court system has the ability to offer enforceable protection, public accountability, and some measure of finality if one or both are unable to agree consensually and require a third-party stranger to make a decision for them.

Peacemaking and litigation are not necessarily incompatible. Litigators who embrace a peacemaking approach can make a positive difference in the lives of clients they serve. For example, Indiana family attorney, Charlie Asher, has proposed an overall cooperative system for family law litigation that includes the least divisive procedures, maximizing cooperation with counsel and unrepresented parties at all times (especially before initial filings), focusing on children's needs, and adopting a problem-solving family orientation for all players in the family law system.³⁵

On an individual case basis, the lawyer can set a peacemaking tone in

34. Forrest S. Mosten, *Informed Consent and Other Best Practices to Ensure Competence*, in COLLABORATIVE DIVORCE HANDBOOK 127–50 (2009).

35. Asher's proposal, for which he received the ABA Lawyer as Problem Solver Award, and other proposed reforms that may follow Asher's pioneering work, supplement and do not necessarily supplant, the excellent voluntary codes of behavior on the local, state, and national level, including *Bounds of Advocacy* (particularly, Number 7 Professional Cooperation and the Administration of Justice) promulgated by the American Academy of Matrimonial Lawyers at <http://www.aaml.org/go/library/publications/bounds-of-advocacy/7-professional-cooperation-and-the-administration-of-justice>. See Asher's entire proposed *Up to Parents Model Rule* for a Cooperative System of Family Law, at <http://www.uptoparents.org/files/UTPModelRule.doc>. Asher also provides instructions on how to use his cutting edge website for parent educators, child-custody evaluators, collaborative attorneys, and collaborative divorce coaches and child specialists. I believe this website, along with www.familywizard.com, is so important that I include links to these sites on my own website and recommend that both mediation parties and individual collaborative clients visit these sites (together, if possible) at the earliest possible stage.

any of the following ways:

1. Readily agree (when not ultimately prejudicial to your client) to requests by the other party to stipulate to facts, admissibility of evidence, and other requests to speed up proceedings and provide the court with the most complete information;
2. Readily agree to requests for personal accommodations from the other party and counsel for continuances based on illness, children's needs, work responsibility, and other reasons;
3. Refuse to take advantage of mistakes committed by opposing parties and counsel;
4. Refrain from ad hominem and negative personal or sarcastic comments;
5. Set a peacemaking tone at settlement meetings and court hearings through moments of silence, readings, a discussion of the beauty of the day, or even prayer.³⁶
6. Extend personally to create a positive peacemaking climate with the other party and counsel. Polite cordiality is a start—however, it is no substitute for a warm greeting (really making eye contact) and trying to meet personal needs. For example, the lawyer can go out of the way to arrange for generous food and drink and inquire about special dietary restrictions. If both lawyers need to travel out of town for a hearing or deposition, proactively offer to travel together. Warmly and genuinely inquire about how the other lawyer and party are doing at work, with their children, and about their lives outside of the case. Such conversations create rapport, reduce mistrust, and contribute to possible settlement or repair of the family after litigation.
7. Listen—truly listen—and show that the lawyer is listening to the concerns and questions of the other side. Before debating or dismissing such concerns, take a moment to acknowledge an understanding and appreciation that they are willing to share such concerns. Underscore positive qualities of requests, even if the client is not prepared to meet it. Use connecting words (“and”) rather than disconnecting negative language (“but”). Illustration:

It is my understanding that you feel strongly that you should receive full

36. The underpinnings of peacemaking are part of the religious traditions of Christianity, Judaism, and Islam. See Daniel Philpott, *After Atrocity: What Religious Traditions Have to Offer Political Reconciliation Today*, Address at 2009 Forrest S. Mosten Conflict Resolution Peace Studies Lectureship (May 20, 2009), available at http://www.religiousstudies.ucr.edu/Mosten/annual_lecture/2009/MostenLectureMay20-2009.pdf. Brian Don Levy, a collaborative lawyer who still litigates when necessary, reports that prior to court hearings he routinely asks opposing counsel if he or she has a “relationship with God.” If he receives a positive response, he and the other attorney pray for the welfare of both parties, that they will be strengthened and focused so that they can soon take control of their own decision making, and that they and their children can eventually be healed. The following biblical quotation is a permanent part of Levy’s e-mail signature: “Blessed are the peacemakers for they will be called sons of God.” *Matthew* 5:9. In a more secular vein, the lawyer can initiate similar peacemaking discussions utilizing selected spiritual readings poetry or joint meditation, or just sitting together. See PAUL R. FLEISCHMAN, *WHY I SIT* (1986), <http://www.events.dhamma.org/presskit/pauls-writings/Why-I-Sit-en.pdf>.

reimbursement for the \$20,000 you spent on the ski vacation that you took to Switzerland with the children. I appreciate that you have provided all of the receipts, and I know that George also wants to share his concerns about this expenditure given your family's tight finances and our agreement to have prior approval of child related expenditures."

8. If the lawyer has a personal conflict with another lawyer, extend an invitation to lunch or coffee to try to reconcile.
9. At all times, advocate for family healing and demonstrate that such an approach is congruent with the interests of the client.

Courts can provide a public, accountable, and enforceable option for clients that can increase opportunities for client empowerment and finality in appropriate situations. Even if a peacemaker favors nonadversarial options or refuses to litigate when other options have been discussed and attempted, a caring and respectful litigator can represent his or her clients in the court process, consistent with peacemaking principles.

C. Mediator as Peacemaker

When I first started my private mediation practice in 1979, those of us in the peacemaking community dreamed of the day when lawyers, courts, and the legal profession would endorse and use mediation as a primary form of dispute resolution.³⁷ This 1970s dream of mediation's acceptance by the legal profession is a reality in the twenty-first century. Led by the organized bar (particularly the American Bar Association), we now have a Uniform Mediation Act, certification of mediators in some states, a body of mediation law, academic and training courses in mediation, prestigious awards, and a plethora of lawyer mediation organizations. The Dispute Resolution Section of the American Bar Association is the world's largest mediation provider organization and one of the biggest sections in the ABA with over 20,000 members. Its annual conference has become the best attended and most prestigious conference in the field.

Today, mediation has become an integral part of family law practice. It is no longer a choice between mediation or lawyers—it is mediation *and* lawyers. Most mediation processes involve lawyers who are actually in the room or acting as consulting lawyers behind the scenes.

Mediation comes in all shapes and sizes. Some jurisdictions compel parties and counsel to participate in mediation. Such court-mandated mediation may take place in the courthouse on the day of a scheduled adversar-

37. In the Family Court of Australia, Alternative Dispute Resolution (ADR) is litigation, arbitration, or other "top-down" processes." Primary Dispute Resolution (PDR) includes mediation, collaborative practice, negotiation, and other "bottom-up" consensual processes. In the United States, ADR has often been renamed "Appropriate Dispute Resolution," Consensual Dispute Resolution (CDR), or merely Dispute Resolution (DR) or Conflict Resolution (CR).

ial court hearing. “Mediation” is used to describe evaluation and directive neutral interventions. The same word is used to describe “transformative mediation,”³⁸ which takes place voluntarily in a private setting in which all proposals come from the parties themselves (lawyers are rarely involved) and the mediator facilitates solely to promote empowerment and recognition of the other party’s needs and concerns. The true interests of the parties are not limited to their “legal rights.” Winning is not part of the conversation, and success is not defined as reaching an agreement. Mediation has many models, styles, and approaches.

The growth and acceptance of mediation is not without perils. With so many forms of mediation, parties and lawyers might not know what mediation is. Two definitions of mediation put this issue in clear relief. The following definition of mediation was promulgated in 1995 through the combined efforts of the American Bar Association, Association for Conflict Resolution, and American Arbitration Association:

Mediation is a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute. Mediation serves various purposes, including providing the opportunity for parties to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions, and reach mutually satisfactory agreements, when desired.³⁹

In contrast, another definition of mediation states:

Mediation is the search for the invisible bridge that connects every living being with every other. It is a poem made of intention and vulnerability. It is a reweaving of souls. It is an opening through which we are able to glimpse the other, naked and divine. It is a synchronization of heartbeats. It is a fierce life and death struggle of each person with himself and herself. It is a design for creating a different future. It is a gentle, responsive exploration of the space between us. It is a breach in the myth of what we know to be true, leading to transformation and transcendence.⁴⁰

While “mediation” is the subject of both definitions, these approaches are complementary but contain very little overlap. The question is whether one wishes to add mediation services as an “add-on” to a current practice or wishes to restructure the practice and career with a peacemaking per-

38. See ROBERT BUSH & JOSEPH FOLGER, *THE PROMISE OF MEDIATION* (2005). Transformative mediators are more interested in achieving a meaningful two-way conversation and “human growth.” The true interests of the parties are not limited to their “legal rights.” Winning is not part of the conversation, and success is not defined as reaching an agreement. See www.transformativemediation.org, sponsored by the Institute for the Study of Conflict Transformation, Inc., at Hofstra Law School.

39. MODEL STANDARDS OF CONDUCT FOR MEDIATORS (1995).

40. Kenneth Cloke, *What Are the Personal Qualities of a Mediator?*, in *BRINGING PEACE INTO THE ROOM*, *supra* note 12.

spective. The difference is whether one remains a traditional family lawyer in mediator clothing or offers mediation services that builds on one's family law experience and skills with the added knowledge and perspective of a peacemaker.⁴¹

As a conflict resolution trainer who favors a tool-box approach, I believe that the most successful mediators plan their strategies and processes, depending on the issues, parties, counsel, time-pressures, and other factors. No one size fits all. If one wishes to offer competent neutral mediation services, one should take at least two to four basic family mediation trainings,⁴² attend conflict resolution conferences both in and out⁴³ of the "lawyer" world, undertake an ambitious reading program,⁴⁴ and join a local mediation study group.⁴⁵ The journey into mediation as either a neutral or client representative requires one to take on a new universe⁴⁶ of books and articles, professional standards, cases and statutes, and practice guides.⁴⁷

41. It is about *being* a mediator, rather than simply *doing* certain prescribed steps dictated by a particular mediation school or theory. "In addition to what a mediator does, there is the matter of what a mediator is. Spirit emanates from being, just as articulately as it does from doing. More specifically, it is the mediator's being, as experienced by the parties, that sends the message." BRINGING PEACE INTO THE ROOM, *supra* note 12, at 16.

42. See www.mediate.com for a current overview and calendar of trainings, organizational meetings, and trends in the field. This site also builds and manages starter websites for conflict resolution professionals and offers marketing materials such as a monthly newsletter that can be sent to clients and referral sources from your office.

43. As one example of a nonlawyer approach to mediation, see THE HANDBOOK OF CONFLICT RESOLUTION: THEORY AND PRACTICE (M. Deutsch & E.C. Marcus eds., 2d ed. 2006). This book contains twenty-six chapters from a broad range of experts on subjects such as trust, power, communication, persuasion, problem solving, judgment biases, anger and retaliation, creativity, reflection, aggression, and culture and conflict. All are subjects well beyond legal training. With the leadership of Christopher Honeyman and David Matz, approximately a decade ago, over fifty mediation scholars, trainers, and practitioners gathered at the University of Massachusetts over a weekend to discuss this book. See also HANDBOOK OF MEDIATION: BRIDGING THEORY, RESEARCH, AND PRACTICE (Margaret Hermann ed. 2006).

44. Take a quick visit to www.amazon.com to see the number and breadth of books on mediation and conflict resolution.

45. Interdisciplinary study groups share cases, invite experts, discuss books, and otherwise provide the members focus, resources, and support to build their mediation practices. See F.S. MOSTEN, MEDIATION CAREER GUIDE 77-78, 186-87 (2001).

46. "The best mediators I know are continually training. . . They are learners both inside and outside the mediation room. . . With the understanding that your mediation training is never over, you should say 'yes' to new courses, books and opportunities to improve your competence." Forrest S. Mosten, *The Path of the Peacemaker: A Mediator's Approach to Marketing*, ACRESOLUTION MAGAZINE, Spr. 2006, at 8-9.

47. Dr. Donald Saposnek describes mediation as a union of art and science, informed by an intuitive understanding of human relationships and their "frictional" element. Developing such an effective mediation style, according to Saposnek, requires not only grounding in the principles of mediation but also a holistic, systemic approach to the components of conflict. The personal qualities that enable a mediator to practice in this way involve an ability to be comfortable with conflict, calm while managing the intensity of the parties' commitments to their separate views, and flexible and open to the parties' perspectives. Perhaps most importantly, effec-

Even though mediation has been so important in changing the landscape of family law, it is not the height of peacemaking. If a mediation is needed, the parties have not yet achieved peace—a dispute is still in existence. The concept “mediation” often connotes a formal legal process that clients want to avoid. A lawyer may wish to utilize mediation skills to call oneself a neutral facilitator or a convener of a meeting just to sit down with the parties and have a “conversation.” In defining peacemaking, some scholars are proposing doing away with the word “mediator” altogether or redefining it to suggest a mediative capacity through a number of fluid roles.⁴⁸ Lawyers and other professionals may call on the mediator who has a large inventory of knowledge and skills, not only to mediate terms of settlement, but also to manage discovery, motions, and other pretrial conflicts,⁴⁹ be an intermediary with experts, conduct a confidential mini-evaluation⁵⁰ or serve as a third-party lawyer neutral within a collaborative law matter,⁵¹ perform an early neutral evaluation, or just meet with parties and their professionals to chat about the case.⁵²

Many lawyers build thriving practices as neutrals while still taking on litigation matters. This is the easiest route if one already has mediation training. The most financially successful mediators are those who have developed and maintain expertise in both law and the craft of mediation because dual credentials tend to reassure the parties and increase their trust and confidence as well as enhance rapport between mediator and the parties.⁵³

tive mediation requires the mediator to establish a trusting relationship with each party and remain compassionate and sympathetic throughout the process. See BRINGING PEACE INTO THE ROOM, *supra* note 12, at 10.

48. See John Paul Lederach, *Building Mediative Capacity in Deep-Rooted Conflict*, 26 FLETCHER F. WORLD AFF. 91 (Spr. 2002).

49. See F.S. MOSTEN, *Cases from Hell: Mediated Case Management*, in COMPLETE GUIDE TO MEDIATION 173 (1997).

50. See F.S. Mosten, *Confidential Mini-Evaluation*, 30 FAM. CT. REV. 373 (1992). A sample stipulation for a Confidential Mini-Evaluation is on the book website for F.S. MOSTEN, *COLLABORATIVE PRACTICE HANDBOOK* (2009), <http://www.mostenmediation.com/books/collaborativedivorce.html>.

51. See F.S. MOSTEN, *How Collaborative Divorce Works with Mediation and Unbundled Legal Services*, in *COLLABORATIVE PRACTICE HANDBOOK* (2009).

52. “In truth, parties in conflict can be more open to feelings, more vulnerable and honest about what is not working, more capable of listening and creative in coming up with solutions than their mediators. We become less successful in resolving conflicts when we form too high an opinion of our own contribution in bringing them about.” Kenneth Cloke, *Qualities of a Mediator*, *supra* note 40, at 53–54.

53. Stephen Goldberg & Margaret Shaw, *The Secrets of Successful (and Unsuccessful) Mediators Continued: Studies Two and Three*, 23 NEGOT. J. 393 (2007) (reporting that the two attributes most commonly found in successful mediators are the ability to establish rapport with the parties and to earn the parties trust). Stephen B. Goldberg, Margaret L. Shaw & Jeanne M. Brett, *What Difference Does a Robe Make? Comparing Mediators with and without Prior Judicial Experience* 25 NEGOT. J. 277 (2009).

D. Unbundled Lawyer as Peacemaker

Unbundling, also known as limited scope representation, discrete task representation, and legal coaching, is not a new concept. It is currently used in law offices worldwide.⁵⁴ Essentially, unbundling is an *agreement* between the client and lawyer to limit the scope of services that the lawyer renders. Many of the consumer benefits of unbundling come from mediation to encourage the empowerment of the parties. A working definition of unbundling is that the client is in charge of selecting one or several discrete lawyering tasks contained within the full-service package.

There are numerous replicable models of lawyers successfully unbundling their services to increase legal access. Unbundling can be either vertical⁵⁵ or horizontal. Vertical unbundling is breaking up the lawyer role into a number of limited services, each service or a combination available for sale. Horizontal unbundling limits the lawyer's involvement to a single issue (spousal support) or a combination of issues (child custody and property, excluding retirement rights). In horizontal unbundling, the lawyer may be engaged for the issue of spousal support only, and the client will either act on his or her own behalf or engage another representative for all other issues. In the same way, a lawyer might represent a client in a single, temporary child-custody hearing, but the client will represent herself at subsequent hearings on child custody or at trial on all issues. Lawyer and client are in charge of determining the scope of representation and in unbundling friendly jurisdictions, the court and other party are required to honor that lawyer-client decision.

54. See the chart developed by the National Center for State Courts (http://www.ncsc.org/Web%20Document%20Library/IR_BrowseByTopic.aspx) describing the unbundling laws and rules state by state. See also sample court forms for limited representation developed by the California Judicial Council, <http://calbar.ca.gov/Calbar/pdfs/accessjustice/riskmanagement-Packet2004-01-12.pdf>.

55. Some examples of vertical unbundling include:

Advice: If a client wants advice only, it can be purchased at an initial consultation or throughout the case as determined by the client with input from the lawyer. The lawyer and client collaborate in helping the client decide if and when further consultations may be needed.

Research: If a client wants legal research, a personal or telephonic unbundled service provides this legal information. Research may take as little as fifteen minutes or as much as ten hours. The client is in charge of determining the scope of the job and who will do the work: the lawyer, client, or a negotiated collaborative effort between the two.

Drafting: Lawyers ghostwrite letters and court pleadings for the client to transmit or just review and comment on what the client has prepared.

Negotiation: Lawyers teach clients how to negotiate with opposing parties, court clerks, and governmental agencies.

Court Appearances: If a client desires, an unbundled lawyer can convert to full representation for court appearances, hearings, and mediation. Lawyer and client agree on discrete tasks.

See F.S. MOSTEN, UNBUNDLING LEGAL SERVICES (2000); F.S. MOSTEN, *Unbundling Legal Services to Help Divorcing Families*, in INNOVATIONS IN FAMILY LAW PRACTICE (Kelly Browe Olson & Nancy Ver Steegh eds., 2008).

Limitation of legal services based on informed consent and a written agreement is permitted in every state and in many western countries.⁵⁶ Every initial consultation with a lawyer, therapist, or accountant that goes no further is an unbundled service. The client either chooses or cannot afford the “full service package” offered by the lawyer. “Second opinions” are classic unbundled services: the lawyer limits his or her scope to review and comment on the work of another lawyer, but does no more. Every time a lawyer writes a single letter, instead of three possible letters, or makes a single phone call for a client, the services are limited and unbundled. Collaborative law and limited scope representation of clients in mediation are also unbundled services.

If a lawyer provides unbundled services, the lawyer will be able to offer experience and skills to otherwise unrepresented parties at a cost that they can better afford. The lawyer can be paid at the customary hourly rate, have fewer unpaid receivables, perform work that is within his competence, and help people who need it. Another benefit is that once unbundled, clients try doing some of the work on their own and experience the challenges and frustrations of doing so (including dealing with opposing counsel). These clients may *convert* to full-service status work and be more willing to pay the requested retainer and additional fees incurred during litigation. In short, unbundling prepares clients to be more informed and more appreciative consumers.

In addition to providing more legal access for the unrepresented and underserved public and more potential income for lawyers, unbundling offers opportunity for peacemaking and constructive help to repair families in distress. One of the biggest deficiencies of self-representation is that pro se parties are deprived of the referrals to mental health professionals and other community resources that lawyers know about and make available to our clients.⁵⁷ The lawyer who offers unbundled services provides a peacemaking perspective and encouragement in a number of ways.

1. ALL PURPOSE UNBUNDLED COUNSELOR, COACH, AND ADVISOR

The most frequent unbundled service is for clients to come in for an office consultation or schedule a phone conference to obtain advice and strategy. While many of these contacts will be to address a technical issue on the law or get the lawyer’s views on improving the client’s position, the lawyer can use these opportunities to try to lessen overall conflict and

56. See MODEL RULES OF PROF’L CONDUCT R. 1.2(c). “A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.”

57. See CONNIE BECK, BRUCE SALES & RICHARD K. HAHN, SELF-REPRESENTATION IN DIVORCE CASES (1993).

recommend a different, more constructive perspective.

By asking questions, inquiring about possible professional referrals and looking for ways to diffuse the conflict, the lawyer may be bringing peace to the situation. Here are some possible peacemaking interventions:

- Ask how the client, her children, and her spouse are doing. If appropriate, discuss a possible referral to a family or individual therapist or other resource;
- If the parties are at loggerheads, ask the client how important the issue at hand is and whether it is possible to “move-on” without expending more time or expense in trying to persuade or threaten the other side;
- Ask the client what he could do differently to improve the situation. At appropriate times, raise the possibility of having your client sincerely apologize for *something* to change the dynamics of the relationship.

2. GHOSTWRITER FOR LETTERS, CONTRACTS, AND COURT DOCUMENTS

Whether the lawyer edits the unbundled client’s draft or writes a document for the client’s signature, the lawyer has a peacemaking opportunity. Clearly, the lawyer can tone down any adversarial language or threats as well as eliminate any personal attacks. In addition, the lawyer can draft invitations to consensual dispute resolution options, explore apologies, create mutually beneficial solutions, and initiate preventive planning that can help both parties. In states that require ghostwriters to disclose their identities on court pleadings to be relieved from making a full appearance,⁵⁸ the lawyer’s peacemaking draftings will not only effectively support the client’s positions, but also leave judicial officers and other attorneys with a positive and resolution-focused impression of the ghostwriter.⁵⁹

3. NEGOTIATION PLANNER AND SIMULATION ROLE PLAYER

Self-represented parties need help in preparing for negotiations that range from a short telephone call to a full-blown court-mandated settlement conference. The lawyer can be invaluable in helping the clients think through wants and needs rather than focusing on demands (interests rather than positions). The lawyer can help modify (lower) expectations by helping the parties think about “what they can live with,” rather than their

58. See generally Maryland Legal Assistance Network, *Informal National Survey of Ethical Opinions Related to “Discrete Task Lawyering,”* <http://www.unbundledlaw.org/thinking/ethic-survey.htm> (last modified Oct. 2003) (see ghostwriting rules for Florida, Colorado, and other states).

59. Once filed with the court or submitted into evidence, pleadings and exhibits (often letters between the parties) are part of the public record. Children of the parties, business associates, the IRS, and the press have open access to these court files. A peacemaking approach to drafting such documents may have a long-term effect on the personal and financial future of both parties.

legal entitlements or their moral/psychological justifications for retribution, reparations, or other payback for past wrongs committed. The lawyer can give a short primer on “win-win” strategies, how to frame an offer, how to focus on the problem, how to read between the lines of stated positions to get to interests,⁶⁰ brainstorm options, and other negotiation basics. The lawyer might even give clients a copy of *Getting to Yes* or another negotiation books or articles. If the lawyer role-plays with the client, the client has the opportunity to “sit in the shoes” of a spouse—the first step toward understanding and empathy.⁶¹

4. SHADOW COURT COACH

While some states have court rules and approved forms for limited-scope court appearances,⁶² the basic unbundled role is for the party to represent himself or herself in the courtroom with the unbundled lawyer helping in litigation preparation.⁶³ In addition to recommending which court pleadings to prepare and helping with drafting, some other tasks that the lawyer can perform as court coach are:

- a. *Prepare documents and visual exhibits:* The lawyer can help the client organize and select documents, make sufficient copies for the court and opposing party, and provide a summary of all exhibits to be presented.
- b. *Practice opening and closing statements:* The lawyer can help clients write outlines or actual narratives of their statements. The lawyer can help a client find reasonable approaches that will mitigate tensions and make it more possible for the family relationship to be repaired later.
- c. *Direct and cross-examination:* In the same way that the lawyer highlights key points for opening and closing statements, the lawyer can prepare the client as a witness to present direct testimony and get ready for the other side’s (or court’s) cross-examination.

60. “Interests motivate people; they are the silent movers behind the hubbub of positions. Your position is something you have decided on. Your interests are what caused you to so decide.” FISHER, ET AL., *GETTING TO YES*, *supra* note 20, at 41.

61. Consider using a video recorder so the client can replay this simulation at home. Another option is for the client to bring a friend or family member to provide honest feedback and suggestions to improve negotiation performance.

62. See generally Maryland Legal Assistance Network, *supra* note 58.

63. Some unbundled lawyers accompany their clients to court and sit in the public gallery. It has been suggested that like witness counsel, coaches can sit at counsel table—most judicial officers and legal-access scholars believe that this crosses the line. As long as the court coach does not interfere with the court proceedings (hand signals or signs clearly are not permitted), the client can pay for the lawyer to come to court to critique the client’s advocacy performance and consult during breaks. As a mediator and collaborative attorney, I have recommended that clients take a courthouse field trip and I have sometimes been invited along.

E. Other Peacemaking Roles for Lawyers

1. REPRESENTATIVE OF PARTIES IN MEDIATION

The lawyer may enjoy the satisfactions of a lawyer-client relationship and not have the interest or commitment to train and serve as an impartial neutral. The lawyer can still maintain the peacemaker card by representing individual clients during the mediation process, in either a full-service or unbundled role.

The role of a consulting lawyer in mediation is different from the traditional role of counsel in family law. Unlike the adversarial duties of the court advocate or negotiating counsel, to maximize financial results and attempt not to leave any “money on the table,”⁶⁴ the consulting lawyer in mediation must delicately balance the optimum short-term bottom dollar result against successful completion of a fair and informed mediated agreement. Rather than engaging in “turf struggles” over such issues as where the mediation will take place or who the mediator will be, as a consulting attorney, the lawyer may adopt an approach of “let it go”—actually deferring to the process requests of the other party to decrease conflict and make sure the case gets into mediation. Just as importantly, the lawyer can display respect and support for the client’s choices made during the negotiation that may differ significantly from what a court might order or what the lawyer might have tried to negotiate.

Everything the family lawyer knows can be applied to representing clients in mediation. Clients need the family-law substantive expertise and knowledge of the court process and personnel to help them discover their BATMAs.⁶⁵ The lawyer’s ability to gather and organize facts, as well as

64. See Michael Becker, *Representing Parties in Private Divorce Mediation*, TRIAL MAG., Aug. 2001, 59–60:

Clients now seek the services of lawyers who understand and support mediation, and who possess the skills and knowledge to work effectively as consulting counsel. . . . Lawyers often play a proactive role in mediation. Stated broadly, the consulting counsel offers information, assistance, and advice to ensure that a party makes good decisions, based on a full understanding of the law and possible outcomes. Consulting counsel usually works with his or her client in between mediation meetings, and is most often not present at the actual mediation sessions There are times when the presence of one or both attorneys is useful, especially at the end of the mediation, when agreements are being finalized or specific options evaluated. *Id.*

65. BATMA stands for the Best Alternative to a Mediated Agreement. In short, if the client cannot cut a deal in mediation that he or she can live with, the lawyer needs to explain what the client faces in result and transaction costs if the matter is litigated and what is the *best* result possible. BATMA should be contrasted with WATNA (Worst Alternative to a Mediated Agreement) or MLATNA (Most Likely Alternative to a Mediated Agreement). By comparing the BATMA, WATMA, and MLATMA, clients can understand the *range* of possibilities if the mediation does not result in an agreement. See FISHER, ET AL., GETTING TO YES, *supra* note 26, from which BATMA is adapted from the author’s BATNA (Best Alternative to a Negotiated Agreement).

provide sources for expert information, is invaluable to informed decision making. And, experience in drafting and negotiating make the lawyer an important resource for the client and for the mediator.⁶⁶

66. See Harold Abramson, *Problem-Solving Advocacy in Mediations: A Model of Client Representation*, 10 HARV. NEGOT. L. REV. 103 (2005); JOHN W. COOLEY, *MEDIATION ADVOCACY* (2d ed. 2002). Some tips for effective independent representation in mediation include:

- Client should be thoroughly advised as to the appropriateness of commencing and/or terminating mediation and the effects of mediation on the client;
- Before commencement of mediation, make an independent assessment of the client's general suitability for mediation and whether emergency needs require immediate judicial relief;
- Establish a working agreement with opposing counsel and the mediator that will balance protection for your client with the flexibility needed for successful mediation;
- Determine the level of client contact during the mediation process. Some clients require attorney consultation before and after each session and others need only an occasional phone chat. If follow-up letters are sent to counsel, determine whether your client requires your specific approval and/or reaction to each letter or just a "flagging" of crucial areas. In any event, the letters should provide a roadmap of the progress of the mediation and give counsel updates as to the issues under review and the trade-offs being made;
- Monitor the informational "discovery" to ascertain whether your client is receiving adequate information to make informed decisions;
- Educate your client on negotiation strategy and the interrelationship between mediation and the court process;
- Help client raise agenda items that will meet immediate needs and make the mediation work more effectively;
- If the mediation is headed for "trouble," determine corrective measures. Some options include instructing client to raise the problem before or during the next mediation session; directly contacting opposing counsel and/or mediator; attending mediation session yourself; writing corrective letter to mediator; or pulling plug immediately by recommending suspension or termination of mediation;
- Determine how experts are to be chosen, paid, instructed, and review any letter of instruction for scope of assignment and how reports are to be used. Review experts' reports in a careful and timely fashion;
- Respond promptly to any problem that arises. If you are opposed to particular client action in mediation, "duke it out" with client and/or opposing counsel and/or mediator long before final MSA is submitted for review. Occasionally, a party will engage in protracted mediation and learn about counsel's reluctance or disapproval *after* mediator fees have been spent and a deal has been cut with spouse;
- Advise clients about the necessity of temporary court orders and monitor the drafting and filing thereof;
- Review MSA, stipulated orders and/or judgment before client signature and court approval. Negotiate problem provisions with opposing party and a mediator, if appropriate;
- Be available for personal support of client throughout mediation process;
- Perform or refer to associate counsel such ancillary legal work as wills, estate planning, vesting, agreement with third persons, QDROs;
- Monitor enforcement of executory provisions of agreement;
- After mediation is concluded, maintain contact with client for changes in circumstances or changes in the law that affect client's situations.

Forrest S. Mosten, *Representing Clients in Private Mediation*, 8 FAM. L. NEWS & REV. 23, 25 (1987).

2. COLLABORATIVE LAWYER AS PEACEMAKER

Collaborative law is an unbundled service because lawyers limit the scope of their services by contracting to bilaterally withdraw if the matter is litigated. It is also based on mediation principles in that the parties are empowered to be at the center of the process. Not only are lawyers less adversarial toward each other, but also they join together to ensure that the negotiation belongs to the parties and that the lawyers sign on to treat their own clients and the other spouse in a respectful and peaceful manner for the benefit of all members of the family.

Collaborative lawyers sign on to the following peacemaking principles:

- Respect and dignity for the other party and other professionals,
- Direct and open communication with the other party and professionals,
- Voluntary and full disclosure of relevant information and documents necessary to make agreements,
- Commitment to the healing of the family,
- Use of interest-based negotiation to try to meet the needs of both parties.

Collaborative law encourages the respectful use and cooperation of lawyers, mental health professionals, and financial professionals on behalf of the divorcing families. The world's largest collaborative organization, the International Academy of Collaborative Professionals, is based on an interdisciplinary approach and its mission is defined as collaborative practice that encompasses many models.⁶⁷

Collaborative law puts a buffer between the parties and the courthouse by taking away the customary lawyer tools of threats and court action. There can be discussion about statutes, cases, and possible outcomes in court without the parties or lawyers making overt threats of filing a court action. Collaborative lawyers believe that the absence of such pressure permits parties to focus on their own needs and those of their children to build agreements.

In the collaborative process, a contract, the participation agreement, provides for the inadmissibility of collaborative communication and doc-

67. The principles of collaborative practice on the website of the International Academy of Collaborative Professionals state:

While Collaborative lawyers are always a part of collaboration, some models provide child specialists, financial specialists and divorce coaches as part of the clients' divorce team. In these models the clients have the option of starting their divorce with the professional with whom they feel most comfortable and with whom they have initial contact. The clients then choose the other professionals they need. The clients benefit throughout collaboration from the assistance and support of all of their chosen professionals.

IACP, *Principles of Collaborative Law*, Jan. 24, 2005, available at <http://www.collaborativepractice.com/lib/Ethics/Principles%20of%20Collaborative%20Practice.pdf>.

uments. Privacy and confidentiality are major incentives for many families to turn to collaborative divorce. The participation agreement can be a private agreement among parties and professionals or a court order. The disqualification clause is a safe way for the parties and professionals to work out issues without the imminent looming specter of litigation. A lawyer who wants to become a collaborative lawyer, should take a basic collaborative training, study the growing literature,⁶⁸ and join a local interdisciplinary collaborative practice group.

3. PREVENTIVE LAWYER

It is curious that we have been slow to recognize that the same logic that leads us to conclude that ADR is better than litigation, leads to a much more compelling ultimate conclusion: Dispute avoidance is far superior to both. . . . We should place greater emphasis on counseling skills and recognize that our learning and practice experiences are far too skewed by an assumption that lawyering is essentially a process of “unscrambling the eggs.” We should foster the notion that the highest and best use of legal services is in providing guidance to clients before rather than after the fact. . . .⁶⁹

Peacemaking conflict-resolution services to settle a dispute do not finish the job. Lawyers have the training and skills to make predictions about how a court might behave. Lawyers can also use professional experience to predict how the client and other family members might behave in the future and take concrete preventive steps to make sure that the client has the benefit of advice before future trouble happens.⁷⁰

68. Leading titles include SHERRIE R. ABNEY, *AVOIDING LITIGATION* (2006); JANET P. BRUMLEY, *DIVORCE WITHOUT DISASTER: COLLABORATIVE LAW IN TEXAS* (Lori Fairchild ed., 2004); CAMERON, *COLLABORATIVE PRACTICE*: *supra* note 2; SHEILA GUTTERMAN, *COLLABORATIVE LAW: A NEW MODEL FOR DISPUTE RESOLUTION* (2004); BARBARA LANDAU, LORNE WOLFSON & N.K. LANDAU, *FAMILY MEDIATION AND COLLABORATIVE PRACTICE HANDBOOK*, (4th ed. 2005); John Lande, *Special Symposium Issue: Developing Better Lawyers and Lawyering Practices*, 2008 J. DISP. RESOL. 1; MACFARLANE, *supra* note 4; MOSTEN, *COLLABORATIVE DIVORCE HANDBOOK*, *supra* note 34; RON OUSKY & STUART WEBB, *THE COLLABORATIVE WAY TO DIVORCE: THE REVOLUTIONARY METHOD THAT RESULTS IN LESS STRESS, LOWER COSTS, AND HAPPIER KIDS—WITHOUT GOING TO COURT* (2006); RICHARD W. SHIELDS, JUDITH P. RYAN & VICTORIA L. SMITH, *COLLABORATIVE FAMILY LAW: ANOTHER WAY TO RESOLVE FAMILY DISPUTES* (2003); KATHERINE STONER, *DIVORCE WITHOUT COURT: A GUIDE TO MEDIATION & COLLABORATIVE DIVORCE* (2006); PAULINE H. TESLER & PEGGY THOMPSON, *COLLABORATIVE DIVORCE: THE REVOLUTIONARY NEW WAY TO RESTRUCTURE YOUR FAMILY, RESOLVE LEGAL ISSUES AND MOVE ON WITH YOUR LIFE* (2006); PAULINE H. TESLER, *COLLABORATIVE LAW: ACHIEVING EFFECTIVE RESOLUTION IN DIVORCE WITHOUT LITIGATION* (2d ed. 2008). For a discussion of leading books, see Lande & Mosten, *Collaborative Lawyers' Duties to Screen*, *supra* note 32.

69. Thomas H. Gonser & Forrest S. Mosten, *The Case for a National Legal Health Strategy*, PREVENTIVE L. REP. 132 (Spr. 1993).

70. See LOUIS M. BROWN & EDWARD DAUER, *PLANNING BY LAWYERS: MATERIALS ON A NONADVERSARIAL LEGAL PROCESS* 309 (1978); see also Bruce J. Winick, David B. Wexler &

Symptomatic preventive planning is using the experience of recent legal trouble to motivate the client to consider ways to avoid similar problems in the future. One method of preventing future conflict is to build in future asymptomatic procedures following the resolution of a legal dispute when no dispute is currently raging.⁷¹

a. Future dispute resolution clauses

The drafting of a judgment following settlement or trial is an opportunity to encourage positive problem solving before potential conflict erupts into a legal dispute. The lawyer should try to put as many barriers between the parties and the courthouse in a comprehensive, mandatory future dispute resolution protocol as part of any settlement agreement.⁷² Some elements of this protocol may include encouraging personal meetings of the parties in neutral locations; informal written explanations of concerns; and required proposals for resolution and consultation with therapists, clergy, and other third parties before any more formal process is initiated. If the matter is still unresolved, the parties may agree to mediation or collaborative law sessions. If such processes do not resolve the issues, the parties can seek the confidential and nonadmissible input from parenting and financial experts within the mediation or collaborative law processes prior to going to the next step of a more formal and admissible report.⁷³ If the matter is still unresolved and the parties need a court decision, the protocol can provide for the parties to meet in mediation to limit issues and provide for the least contentious and expensive litigation process. Finally, after a litigated result is obtained, the protocol can mandate a return to mediation to clarify any judicial orders and permit the parties the opportunity to heal.

Edward A. Dauer, *Special Theme: Therapeutic Jurisprudence and Preventive Law: Transforming Legal Practice and Education*, 5 PSYCHOL. PUB. POL'Y & L. 795, 798–99 (1999).

71. Louis M. Brown and other preventive scholars rely on the more developed medical model as an analogy for legal prevention. A few of his articles include *Legal Autopsy*, 39 J. AM. JUDICATURE SOC'Y 47 (1955); *Family Lawyer and Preventive Law*, 35 CAL. ST. B.J. 43 (1960); *Preventive Medicine and Preventive Law: An Essay That Belongs to My Heart*, 11 J.L. MED. & ETHICS 220 (1983) (describing how a routine asymptomatic physical exam uncovered a problem that was repaired to increase Professor Brown's life span).

72. "Effective prevention, however, goes beyond the language written into the contract. Prevention is better conceived in the broader contexts of real-life systems in which people interact with one another and with the objects and spaces of the physical world." Thomas D. Barton, *The Modes and Tenses of Legal Problem Solving, and What to Do About Them in Legal Education*, 43 CAL. W. L. REV. 389, 398 (2007); THOMAS D. BARTON, PREVENTIVE LAW AND PROBLEM SOLVING: LAWYERING FOR THE FUTURE (2009).

73. See generally F.S. MOSTEN, *How Collaborative Divorce Works*, supra note 51. See generally F.S. Mosten, *Multi-Step Dispute Resolution Protocol*, in COLLABORATIVE DIVORCE HANDBOOK, app. B No. 9, (2009), available at <http://www.wiley.com/WileyCDA/WileyTitle/productCd-0470395192,descCd-DOWNLOAD.html>.

b. Monitoring settlements to maximize compliance

Just as most people signal before making left-hand turns, most people keep their agreements. Because of the current and future costs to clients who either breach their agreements or have to react to the other side's breach, the lawyer's mission is to help both parties comply with settlement terms *before* any dispute about compliance arises.

One method to increase compliance is built in scheduled meetings and assessments. Many parents agree to a weekly or monthly meeting by phone or in person. Sometimes the process is calibrated to start with regular telephone meetings, and in-person meetings only if necessary. These meetings occur when there may be no problem or issue. Actually, this is the best situation. Rather than always negotiating problems, mediation and clients can use asymptomatic regular meetings to share information and anticipate potential problems with the children.⁷⁴

Regularly scheduled future assessments and reevaluation of current agreements can be helpful to permit parties to meet semiannually or annually to discuss parenting and/or support agreements. In addition to giving parties the comfort of knowing that agreements can be modified, if they are planning for a regularly scheduled meeting in two or three months time, instead of confronting each other, they might save up concerns for the meeting, which can involve just the parties, with a neutral mediator, or take place in a collaborative representative setting.

Another asymptomatic approach is to calendar executory settlement provisions or life-cycle events for planned future discussion. This is based on the preventive law maxim that a "file never closes." Thus, when clients leave the lawyer's office, they should know when lawyer and client will next meet and how the meeting will be arranged and by whom. The lawyer can anticipate the need for meetings when the family residence is scheduled to be sold, when children need to change schools, or when spousal support will end so that child support and other issues may need refinement.

c. Preventive client education

People are not born knowing what to say and do. It is the lawyer's responsibility to teach clients how to be effective in that role, particularly as effective collaborative clients. To accomplish this, many lawyers have books, brochures, articles, and sample forms and instructions readily available to clients. Lawyers can prepare handouts in advance so they are ready when needed.

74. Tools to aid this preventive agenda include websites such as www.ourfamilywizard.com, which provides calendars for upcoming activities, contact information for medical and educational providers, which provide information with less risk of escalation between parties than phone calls or in-person discussion.

A client library in a small room in the office or in a corner of the waiting room can help educate clients. A client library is a collection of consumer-friendly books, DVDs and videos, audiotapes, brochures, and other resources. It is a place for clients to draft documents, make a private telephone call, or just have a private cry. I could not practice collaborative divorce without a client library. It can be a concrete symbol of client empowerment that supports your values and skills in your practice. Finally, the lawyer might initiate the process of an asymptomatic legal/conflict wellness check-up to help clients assess the current state of their legal health.⁷⁵

IV. The Future of Peacemaking in Family Law

Peacemaking is already inculcated into the values and services offered by many lawyers. Mediation is universally institutionalized as part of the court system. Statutes, court rules, and programs for limited scope representation and collaborative law are becoming part of the landscape. Inspired by the thinking of scholars such as Julie MacFarlane, Leonard Riskin, Susan Daicoff, Thomas Barton and others, family lawyers now have a rich conceptual foundation for a peacemaking approach. These efforts have been captured in a proposal for peacemaking reform programs such as Family Law Education Reform Project (FLER)⁷⁶ and the Center for Creative Problem Solving (California Western School of Law).⁷⁷ Practitioners such as David Hoffman, Pauline Tesler, and Charles Asher have provided the field with hands on skill development and tools to integrate peacemaking into our daily lives. Interdisciplinary organizations, such as Association of Family and Conciliation Courts (AFCC), Academy of Collaborative Professionals (IACP), Resolution UK,⁷⁸ International Alliance of Holistic Lawyers, and the ABA Section on Dispute Resolution (Lawyer as Problem Solver Program), offer journals and conferences to teach peacemaking and inspire the field. Perhaps most importantly, coura-

75. See F.S. Mosten, Personal Legal Wellness Checklist, <http://www.mostenmediation.com/legal/wellness.html>.

76. Mary O'Connell & J. Herbie Difonzo, *The Family Law Education Reform Project Final Report*, 44 FAM. CT. REV. 524 (2006), available at <http://www.afccnet.org/pdfs/Family%20Law%20Education%20Reform%20Project%20Final%20Report.pdf>.

77. California Western School of Law, Center for Creative Problem Solving, http://www.cwsl.edu/main/default.asp?nav=creative_problem_solving.asp&body=creative_problem_solving/home.asp (last visited Sept. 29, 2009).

78. Resolution UK is a peacemaking-centered family lawyer organization that thrives alongside the Law Society of England and Wales (most of its members take litigation engagements). Resolution UK's Code of Practice bears study by U.S. family lawyers (http://www.resolution.org.uk/site_content_files/files/code_of_practice_22.2.07_final.pdf).

geous judges, such as Hon. Aviva Bobb⁷⁹ and Hon. Rebecca Albrecht (pioneer of the Maricopa County Superior Self-Service Center in Phoenix)⁸⁰ provide peacemaking guidance to litigants and lawyers in their own communities and replicable models for courts worldwide.

To promote peacemaking in the legal profession, I propose the following agenda:

1. Add peacemaking to the required continuing education for all family lawyers and a separate certification for specialization in dispute resolution and peacemaking should be considered for adoption.⁸¹
2. Encourage a Peacemaker Impact Assessment as to the design and furnishing of court facilities, appointment of judicial officers, training of staff, and promulgation of court procedures;⁸²
3. Seek governmental and foundation subsidies for peacemaking pro bono community services and peacemaker practice-building opportunities in both the public and private sectors that would provide greater personal meaning and career satisfaction for lawyers.⁸³
4. Develop incentives for lawyers to transform their offices into classrooms of client education to teach peaceful client empowerment and provide resources for clients to practice peacemaking in their legal cases and in other aspects of their lives.⁸⁴

Whether one practices in a big city or a small town, or whether one represents clients with major financial estates or people just trying to survive below the poverty line, the lawyer can add peacemaking to his or her practice. Now is the time to look beyond the legal issues to the lives you can affect for generations. By resolving and preventing conflict through a

79. See text accompanying *supra* note 25.

80. See generally Judicial Branch of Arizona, Maricopa County, Self-Service Center, <http://www.superiorcourt.maricopa.gov/superiorcourt/self-servicecenter> (last visited Sept. 29, 2009).

81. A comprehensive proposal for Lawyer Specialization in Conflict Resolution can be found in F.S. MOSTEN, *Unbundling Legal Services to Help Divorcing Families*, *supra* note 55.

82. See F.S. Mosten, *Institutionalization of Mediation*, 42 FAM. CT. REV. 292 (2004); F.S. Mosten, *The Potential of the Family Law Education Reform Project for Family Lawyers*, 45 FAM. CT. REV. 5 (2007).

83. F.S. Mosten, *The Path of the Peacemaker: A Mediator's Guide to Peacemaking*, ACRESOLUTION MAGAZINE, Spr. 2006, at 8.

84. Such incentives could include credit for bar dues, state tax credits, hours for mandatory continuing legal education, priority in the court system; satisfaction for family-law specialization requirements; or eligibility to receive books, DVDs, computers or other educational materials on a complimentary or reduced-price basis. You might research the movement and pending legislation for a United States Department of Peace (HR 808 introduced by Representative Kucinich) and National Peace Academy (www.nationalacademy.us) that might accelerate the time when such incentives can be encouraged and funded.

peacemaking lens, the lawyer can help clients make a true difference for themselves and heal their families. At the same time, the lawyer can contribute to clients' lives in a profound way through healing, encouraging forgiveness, and promotion of interdisciplinary problem solving with an emphasis on empowerment and family harmony. In so doing, the lawyer can be re-energized in the practice of law.

It is my hope that this article will motivate lawyers to undertake further reading and training in how to bring peace into their own lives and those of their clients. As a concrete first step, consider taking the following Lawyer Peacemaker Pledge:⁸⁵

Lawyer Peacemaker Pledge

I will think about creating peace for individuals and families.

I will use my peacemaker efforts to help maximize healing and harmony:

In my own life;

In my own family;

In my office;

In my work with clients, their families, colleagues, and other participants in the family law system;

In the legal profession; and

In my local community, my country, and throughout the world.⁸⁶

Date: _____

By: _____

Directions: Place the signed peacemaker pledge into a sealed envelope. Put the envelope in a safe place. On the one-year anniversary of the pledge, open the envelope, take out the signed pledge, think about last year's peacemaking efforts, and then repledge for another year.

85. See F.S. Mosten, *The Client Library: Law Firm's Preventive Law Classroom*, PREVENTIVE L. REP., Fall 1995, and the Southern California Mediation Association's Forrest S. Mosten Conflict Resolution Library Project, http://www.scmmediation.org/western_justice_center_library.asp.

86. Adapted from FORREST S. MOSTEN, *MEDIATION CAREER GUIDE* (2001).