

Forrest S. Mosten, *Lawyer as Peacemaker*(excerpt, Citations Omitted)

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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.” Reconciliation is defined as restoring or creating harmony in the family. Family lawyer peacemakers come from all backgrounds, have very different personalities, and offer services ranging from litigator to parent educator. Being a peacemaker is not defined by what role you play in helping families but by how you provide reconciliation and harmony in your 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 you bring to your work as a family lawyer define whether you are a peacemaker.

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 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.

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. . . .

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

evolution of lawyer 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.

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 in-artfully 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.

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 our work.

B. Comprehensive Law Movement

In her brilliant 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. Family law has already begun the evolution away from the traditional adversarial role towards peacemaking. Daicoff cites three models of the Comprehensive Law Movement that are part of many lawyers’ practices.

Therapeutic Justice (TJ): 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. Recognizing the importance of both substantive and therapeutic concern, TJ urges lawyers to work for both a desired legal and therapeutic for clients.

Holistic Lawyering: 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.

Restorative Justice: 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.

III. Peacemaking in Law Practice

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

A. Negotiation and Problem Solving

The best 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.

Courts have also taken leadership in recommending the use of negotiation and problem solving techniques to family law parties. The following excerpts are from a letter to every family law party that is currently being sent by the Supervising Judge of the Family Department of Los Angeles:

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.

B. 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.” The skills of active listening and acknowledging the emotions of 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.

C. Interdisciplinary Approach

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.

D. 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.” 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.

E. Are you already a Peacemaker?

Think of the people you have helped in the past year “settle their cases” and reflect how you have taken the following peacemaking aspects into account:

- 1. The quality of your relationship with your clients.** Have you proactively encouraged rapport and emotional support outside of the technical professional discussion of the legal issues involved?
- 2. The importance of your clients return to wholeness.** Do you encourage your 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?
- 3. Helping clients find and listen to their higher intelligence and inner wisdom.** Are you committed to help your clients bring their best selves forward that have often been compromised by the adrenalin and stress of conflict? Do you go beyond asking your clients to be reasonable and logical to help them touch their wisdom?
- 4. Stimulating a healing attitude and hope.** Do you believe that change is possible and that you (as well as your client) are working toward a better future? Do you have a sense that this hope gives you and your clients energy?

If these concepts feel familiar to you and your current practice, then it is likely that you are already incorporating peacemaking values into your practice. Perhaps you may wish to

extend the scope of your own approach to your clients by offering new peacemaking services into your existing practice.