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BUILDING A SUCCESSFUL LAW PRACTICE WITHOUT EVER GOING TO COURT

By Forrest S. Mosten

A peacemaker is "one who makes peace, especially by reconciling parties in conflict." Family lawyer peacemakers offer services ranging from litigator to parent educator. Many family law practitioners are already utilizing peacemaking as a permanent part of their work.

Peacemaking services for family law clients. 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. Before writing a demand letter or filing a court action, it is best

and referrals, or, at least, recommend that the client find out more about these other service models. A peacemaker should proactively provide a more comprehensive and nuanced explanation of the following additional options: client self-resolution; party-party resolution; lawyer-lawyer resolution; four-way settlement conference; collaborative settlement conference; and mediation.

Litigator as peacemaker. Peacemaking and litigation are not necessarily incompatible. Litigators who embrace a peacemaking approach can make a positive difference in the lives of their clients. On an individual case basis, the lawyer can set a peacemaking tone in many ways: (1) readily agree to requests by the other party to stipulate to facts, admissibility of

and sizes. Some jurisdictions compel parties and counsel to participate in mediation. "Mediation" is used to describe evaluation and directive neutral interventions. The same word, "mediation," is used to describe "transformative mediation," which takes place voluntarily in a private setting in which all proposals come from the parties themselves and the mediator facilitates solely to promote empowerment and recognition of the other party's needs and concerns.

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. One definition states, "Mediation is a process in which an impartial third party facilitates communication and negotiation and promotes voluntary

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practice for the lawyer to explain what other non-litigation process options are available. If the lawyer is not qualified or chooses not to offer other process options that are available in the community, the lawyer should discuss these and provide resources

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evidence, and other requests to speed up proceedings; (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 negative personal or sarcastic comments; and (5) at all times advocate for family healing and demonstrate that such an approach is congruent with the interests of the client.

Mediator as peacemaker. 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.

Mediation comes in all shapes

and decision making by the parties to the dispute." In contrast, another definition of mediation states, "Mediation is the search for the invisible bridge that connects every living being with every other."

The question is whether one wishes to add mediation services as an "add-on" to a current practice or wishes to restructure one's practice and career with a peacemaking perspective. The difference is whether one remains a traditional family lawyer in mediator clothing or offers mediation services that build on one's family law experience and skills with the added knowledge and perspective of a peacemaker.

Unbundled lawyer as peacemaker. Essentially, unbundling is an

agreement between the client and lawyer to limit the scope of services that the lawyer renders. A working definition of unbundling is that the client is in charge of selecting one or several discrete lawyering tasks contained within the full-serviced package.

There are numerous replicable models of lawyers successfully unbundling their services to increase legal access. Unbundling can be either vertical or horizontal. Vertical unbundling is breaking up the lawyer role into a number of limited services, with each service or a combination available for sale. Horizontal unbundling limits the lawyer's involvement to a single issue or a combination of issues. In a 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 addition to providing more legal access for the unrepresented and undeserved 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 clients. The lawyer who offers unbundled services can provide such referrals—and offer a peacemaking perspective and encouragement in a number of other ways.

Consulting lawyer as peacemaker. 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," 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.

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 often join together with mental health and financial professionals to ensure that the negotiation belongs to the parties and that all collaborative professionals 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.

Preventive lawyer as peacemaker. Peacemaking conflict-resolution services to settle a dispute do not necessarily finish the job. Lawyers can 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. Lawyers can build in future asymptomatic procedures following

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FOR MORE INFORMATION ABOUT THE SECTION OF FAMILY LAW

- **This article** is an abridged and edited version of one that originally appeared on page 489 of *Family Law Quarterly*, Fall 2009 (43:3).

- **For more information** or to obtain a copy of the periodical in which the full article appears, please call the ABA Service Center at 800/285-2221.

- **Website:** www.abanet.org/family.

- **Periodicals:** *Family Advocate*, quarterly magazine with three issues that include how-to articles and current trends in family law for lawyers, and a fourth "Client Manual" issue for lawyers and their clients covering aspects of the divorce process; *Family Law Quarterly*, a scholarly journal that offers an analytical view of family law issues, including "Family Law in the Fifty States."

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the resolution of a legal dispute when no dispute is currently raging. 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 as possible between the parties and the courthouse in a comprehensive future dispute resolution protocol as part of any settlement agreement. One method to increase compliance with settlement agreements is built-in scheduled

meetings and assessments. Regularly scheduled future assessments and re-evaluation of current agreements can be helpful to permit parties to meet semiannually or annually to discuss parenting and/or support agreements. **REPRINTED**