

Collaborative Review

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Peacemaking Within Collaborative Practice¹

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Most Collaborative professionals have evolved beyond the old paradigm² and are committed to settling cases within the safe container of an interdisciplinary non-adversarial process that focuses on problem solving and interest-based negotiation rather than threats, power, or ultimate use of the court system.

The success of Collaborative Practice is evident in its growing use by the public, acceptance by courts and professional bodies, favorable ethical opinions, and by the imminent passage of the Uniform Collaborative Law Act that gives further legitimacy to Collaborative Law by creating a national model law.

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While achieving a high settlement rate is important, perhaps even more important is the opportunity for Collaborative Practice to bring durable peace and harmony to divorcing families.

Just as the absence of war is not peace, helping people get divorced without litigation does not make you a peacemaker.

By embracing peacemaking as a central value in all of your work, you have an opportunity to make a lasting contribution to the families you touch and to make a difference in your own life that goes far beyond reaching a better kind of divorce settlement and making your living in a less destructive way. If you reach just a bit more beyond settling cases to become a peacemaker through collaboration, you have a chance to truly make a lasting difference in the lives of every member of the families you serve as well as in the quality of your own personal life. Just as the absence of war is not peace, helping people get divorced without litigation does not make you a peacemaker. With your intentionality to go beyond making Collaborative settlements and incorporate peacemaking, you can work toward that transformation, one step at a time.

One underpinning of the Collaborative movement is that everyone and everything is interconnected. No one can resolve conflict alone. No one can create peace without the help of others. The move away from an adversarial approach toward collaboration, so eloquently articulated by Julie Macfarlane, Nancy Cameron, David Hoffman, Pauline Tesler, and many others, was built on the shoulders of Stu Webb's courage and progressive ideas. Webb also drew inspiration from the interdisciplinary and conflict resolution contributions of mediation and the legal access focus of the unbundling movement. Acknowledging these roots and connections permit us to work toward the humility that Stu Webb has modeled and from which our clients and professional colleagues can learn.

Peacemaking: A Personal Story

For my first quarter century of law practice, I led two lives. Although I developed a growing mediation and Collaborative Practice, I also served as a soup-to-nuts family lawyer, 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:

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.³

Approximately a decade ago, I decided to focus totally on peacemaking and refuse any further litigation. While I was afraid that my family 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 50% of the time and the other half is composed of four representative roles: Collaborative lawyer; client representative during mediations presided by other neutrals (often with a litigator co-counsel); unbundled lawyer-coach for self-represented parties; and transaction lawyer building relationship agreements such as premarital, post-marital, cohabitation, and other matters involving long-range relationships such as business partnerships, probate disputes, and adoption and surrogacy agreements.

If you reach just a bit more beyond settling cases to become a peacemaker through collaboration, you have a chance to truly make a lasting difference ...

Rather than being a financial disaster, my decision to be a non-court family lawyer resulted in rapid growth of my practice beyond my most optimistic expectations. The financial benefits, though important, pale in comparison to the joy and rejuvenation I feel towards practicing family law. Although I am over 60 years old, I get up in the morning ready to run to the office. I cannot imagine retiring from law practice. Mounting the one horse of "non-litigation," 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. My message to all Collaborative professionals is that peacemaking is exactly the work many of us perform already. We need to know what peacemaking models are currently in practice and make a commitment to peacemaking as the center of our professional lives.

What is a Peacemaker?

A peacemaker is defined as “one who makes peace especially by reconciling parties in conflict.” Reconciliation is defined as restoring or creating harmony in the family.⁴

Collaborative peacemakers come from various backgrounds, live in cities and rural towns, have very different personalities, and offer a variety of professional service models. There is no litmus test that you need to pass to earn your peacemaker card. 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 Collaborative professional will define your peacemaking capacity.

Peacemakers Can Be Healers

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 our clients and others heal from the open wounds of family conflict without dictating in what form the healing may be received so that we are not caught up with anxiety by being “results and settlement obsessed” to assess whether our efforts bear fruit.⁵

Peacemakers Are Seen as Mindful and Aware of Others

Another approach to peacemaking is the discipline of “mindfulness” developed by Professor Leonard Riskin.⁶ Mindfulness concentrates on our personal evolution to do our jobs better by acquiring compassion, help us provide professional distance so that we do not get caught up in the emotions and reactivity of our clients, free us from habitual mindsets that hinder our creativity in negotiation ... Mindfulness also permits us to reflect how we are personally affected by our work and to increase our own self-care.⁷

Peacemakers are Forgiving

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 artlessly 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 our clients, the other party and professionals, and within the Collaborative community.

Peacemakers are Positive and Optimistic

Professor Stephen Goldberg identifies trust and integrity as the qualities that parties and attorneys value most in a mediator.⁸

A key element of both integrity and trust is the peacemaker’s positive—even optimistic—belief that current conflict can be resolved, and future conflict can be prevented. With warring spouses, often it is solely the Collaborative professional’s commitment and hope for a successful settlement that can motivate parties to make constructive movement (often in baby steps) toward a peaceful resolution.

Peacemakers Try to Eliminate Blame

Blame is a “no-win” game—in fact, the seminal best-seller *Getting to Yes*⁹ is responsible for the now well-known concept “win-win.” Active listening, acknowledging and being tolerant of the emotions of the other party, as well as non-judgmentally developing and exploring options (brainstorming) are skills that the best Collaborative professionals use not just in negotiation over settlement terms, but also in counseling our clients, in working with our staff, in Collaborative team meetings, and, perhaps most importantly, in being gentle and non-blaming with ourselves.

Viewing Conflict Through a Peacemaking Lens

In her brilliant 2006 article, Professor Susan Daicoff discusses how a “comprehensive law movement” relates peacemaking as the lens through which we can view clients and their problems.¹⁰ Daicoff cites three models of the Comprehensive Law Movement that are currently active in family law today.¹¹

Therapeutic Justice (TJ): TJ uses 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 Collaborative professionals.¹² Recognizing the importance of both substantive and therapeutic concern, TJ urges Collaborative professionals to work for both a desired legal and therapeutic outcome for clients.

Holistic Lawyering (HL): HL is based on spiritual growth for both clients 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.¹³

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.¹⁴

Walking the Walk

We all must strive to be congruent with our goals, words, and actions to walk the walk of a peacemaker in every aspect of our professional work and in our personal lives. Since we operate in the marketplace, we are “selling” resolution, fairness, patience, integrity, trust, strength and sound judgment. The way we frame our

peacemaking services will ultimately determine whether we have clients who are willing to make the ultimate consumer commitment—purchasing our services and recommending us to others.

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A commitment to peacemaking can help shape your Collaborative Signature whether you have just completed a basic Collaborative training seminar or you have been successfully utilizing the new paradigm for the last 15 years. Think about introducing yourself as a Collaborative peacemaker at professional functions and social functions. People are interested in learning from and about peacemakers. Your energy and expertise as a peacemaker revealed in social conversations may leave the impression (and truth) that you are engaged in a profession that cares about helping people and society. If collaboration and building family peace are your primary identities, let people know it.

Treat family professionals who still practice in traditional adversarial court-based models as allies. Many Collaborative Practitioners unfortunately develop a competitive “us-versus-them” approach in describing litigators or the court system. Within our own Collaborative community, when you disagree with Collaborative colleagues on issues small and large, use your Collaborative negotiation skills to acknowledge positive initiatives or common goals as a foundation for offering creative and alternative solutions. When you feel you have something to contribute to discussions, whether on a listserv or at a meeting of your Collaborative Practice Group, try to provide your input in a gentle, non-blaming and tolerant manner. Regardless of your viewpoint, the way you make comments at meetings with colleagues or letters in professional publications reflects your peacemaking approach. Pejorative or negative personal comments about others can hurt the growth of your practice and the Collaborative movement.

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:¹⁵

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 helping 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?

Think about introducing yourself as a Collaborative peacemaker at professional functions and social functions.

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. If you are interested in extending your journey further into peacemaking, you might start by working on your peacemaking commitment with the groundbreaking work of Nan Waller Burnett’s 2007 book, *Calm in the Face of the Storm: Spiritual Daily Practice for the Peacemaker*.¹⁶ Written for the personal support and growth of Collaborative professionals, mediators, and others who give service in resolving conflict, Burnett’s book contains 365 daily readings, one for each day of your next year. When you are ready, you might skim through the daily readings to see if any of them have meaning for you. In her introduction, Burnett states:

Each day sets forth a theme, a short discussion of the topic, an introduction to a meditation, and a suggestion for a journeying exercise Working for inner peace, peace for the planet, and transformation in relationships has been my passion for many years In the course of working with conflict every day, I found that I had chosen isolation, I felt trampled, and deprived of energy on the weekends I was swimming in the problem-saturated ocean of my clients. In talking with other practitioners, I discovered that I was not alone I have strong opinions about the practice of training peacemakers and conflict professionals to be “step-followers.” We need to

be training the practitioner to be reflective, to understand theory, and to bring a more personal holistic force to the table. If your work is in human relationships, peace, conflict or conciliation, with patients, employees, or citizens—or you simply want peace on the planet—this book is meant for you. [Introduction, pp xi-xiv]

These words are certainly meant for me. I still gain immense personal satisfaction from helping clients resolve conflicts and form positive relationships, as well as from my interaction with colleagues. However, I have needed more. This has led to my involvement with other peacemaking initiatives that go beyond my work with divorcing families. Balancing my practice with these peacemaking efforts has not been easy. Yet the journey is exciting, and my practice and peacemaking work seem to balance each other.

Regardless of your viewpoint, the way you make comments at meetings with colleagues or letters in professional publications reflects your peacemaking approach.

Although Burnett's book is intended for our spiritual growth and comfort, this approach mirrors my own efforts in *Mediation Career Guide* (2001) to adapt peacemaking values in developing a signature for our work with our clients and with each other. Burnett uses her daily themes as a tapestry to weave a living definition of peacemaking. I have selected some of Burnett's themes and linked them with my vision of peacemaking values to offer five strategies to integrate peacemaking in your work at the negotiation table and in collaboration with colleagues. As you review each value, take the following steps to inject them into the cases you are working on now and practice development. Read each of the steps aloud to yourself and then write out your answers as you develop them:¹⁷

1. Explain each value and its importance in your work.
2. Think about how you share and communicate with clients and with colleagues and how you implement each value in your work.
3. Ask yourself how each value applies to the process that you use to resolve any issue under discussion.
4. Reflect how you can implement each value into options to resolve any issue.

Discuss these values in your practice groups, with colleagues at conferences and lunch, and with friends and your family. These

are not one-time conversations. They can develop and evolve throughout your Collaborative career.

(See Peacemaking Values and Strategies on facing page.)

Your Next Steps as a Peacemaker

Whether you practice in a big city or a small town or whether you represent clients with major financial estates or people just trying to survive above the poverty line, you can add peacemaking to your practice. Now is the time to look beyond the legal issues in your cases to the lives you can affect for generations. You can discover that by resolving and preventing family conflict through a peacemaking lens, you can help your clients make a true difference for themselves and the healing of their family. At the same time, you can contribute to your clients' lives in a profound way through healing, encouraging forgiveness, and promoting interdisciplinary problem-solving with an emphasis on empowerment and family harmony. In so doing, you can be re-energized in your own practice and be reminded daily why you chose Collaborative Practice as your life's work. It is my hope that this article will motivate you to undertake further reading and training for your own journey in exploring how you can bring peace into your own life and those of your clients. As one concrete step, you might consider taking the following Collaborative Professional Peacemaker Pledge.¹⁸

DIRECTIONS: Place the signed Peacemaker Pledge into a sealed envelope. Put the envelope in a safe place. On the one-year anniversary of your Pledge, open the envelope, take out your signed pledge, think about your last year's peacemaking efforts and then re-pledge for another year. **C**

Endnotes

¹ This article is adapted from "Building a Profitable Collaborative Practice: Make Peacemaking Your Day Job" published in IACP materials for the 2009 Pre-Forum Institute and contains excerpts from the following publications of the author: *The Collaborative Divorce Handbook* (Jossey Bass, 2009); "Lawyer as Peacemaker: Building a Successful Peacemaking Practice Without Ever Going to Court" *Family Law Quarterly*, Volume 43, Number 3, Fall 2009; and "The Path of the Peacemaker: A Mediator's Guide to Peacemaking" *ACResolution*, Spring 2006, 5(1), 8-11.

² For an inspirational definition of the "paradigm shift" see Pauline Tesler, *Collaborative Law*, 2nd Edition (ABA 2008): "The paradigm shift refers to the alteration in consciousness whereby lawyers retool themselves from the adversarial to collaborative lawyers. The paradigm first requires the lawyer to become aware of unconscious adversarial habits of speech as well as automatic adversarial thought-forms, reactions, and behaviors. The second step of the paradigm shift is to adopt the beginner's mind, learning new ways of thinking, speaking and behaving as a collaborative lawyer." (pp 79-80).

³ Nancy Cameron, *Collaborative Practice: Deepening the Dialogue* (Vancouver, B.C: Continuing Legal Education Society of British Columbia, 2004), pages 66 and 97.

⁴ Merriam Webster Dictionary online, <http://www.merriam-webster.com>. For the sake of simplicity, I shall use the terms “peacemaking” and “peacemaker” in this article in situations when the terms “peacebuilding” or “peacebuilder” may truly be more appropriate. In her keynote address at the 2009 IACP Forum, outgoing IACP President Nancy Cameron urged Collaborative professionals to go beyond peacemaking in our work to peacebuilding in our society: “Perhaps, a hundred years from now, the dispute resolution field will not need the safety of the disqualification agreement, because we will truly have helped to transform how conflict is resolved worldwide, by committing to peacebuilding. . . . Peacebuilding is to increase our capacity to hold peace and, in everything we do, to prepare fertile ground for peace. Peacebuilding is cumulative. It builds from our peacemaking in a particular case, to our interpersonal skills with our colleagues, to our relationships in our professional community, and home into our families. It is about taking our peacemaking skills into the daily milieu of our lives, and into our larger communities.”

⁵ Lois Gold, in Daniel Bowling and David Hoffman, *Bringing Peace into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution* (Jossey Bass 2003) p 194.

⁶ Riskin defines mindfulness as: “Mindfulness. . . means being aware, moment to 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 Journal of Legal Education* 79, 83 (2004).

⁷ Leonard L. Riskin, “The Contemplative Lawyer: On the Potential Contributors of Mindfulness Meditation to Law Students, Lawyers, and their Clients,” *7 Harvard Negotiation Law Review* 1, 30 (2002).

⁸ Stephen Goldberg & Margaret Shaw, “The Secrets of Successful (and Unsuccessful) Mediators Continued: Studies Two and Three,” *23 Negotiation Journal* 393 (2007).

⁹ Roger Fisher, William Ury & Bruce Patton, *Getting to Yes* (1991).

¹⁰ Susan Daicoff, “Law as a Healing Profession: The ‘Comprehensive Law Movement,’” *6 Pepperdine Dispute Resolution Law Journal* 1, 50–51 (2006).

¹¹ Professor Daicoff labels these models “vectors.” The additional Comprehensive Law vectors are Collaborative Law, Creative Problem Solving, and Preventive Law.

¹² 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.

¹³ See generally International Alliance of Holistic Lawyers, Homepage, www.iahl.org (last visited Sept. 29, 2009).

¹⁴ Daicoff, *supra* note 17, at 33.

¹⁵ The following discussion and questions about healing are adapted from Gold, in *Bringing Peace into the Room*, *supra* note 6.

¹⁶ See www.calminthefaceofthestorm.com.

¹⁷ See Forrest S. Mosten, Chapter 9: “Walking the Collaborative Walk: Taking Twenty Five Steps Toward Peacemaking,” in *Collaborative Divorce Handbook* (2009).

¹⁸ Adapted from Forrest S. Mosten, *Mediation Career Guide* (2001).

COLLABORATIVE PROFESSIONAL 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 Collaborative Law Field; and

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

Date: _____ By: _____

Forrest “Woody” Mosten is a Collaborative Lawyer and IACP Member-Trainer who has been in private peacemaking practice in Los Angeles since 1979. The author of four books including *Collaborative Divorce Handbook* (Jossey Bass 2009) and numerous articles, he is a member of the faculty at UCLA School of Law and in Summer 2009, he taught “Peacemaking in the Legal Profession and in Society” at Hamline School of Law in St. Paul, Minnesota. He is the Chair of the Taskforce for a National Peacemaking Museum, 2009 Keynote Speaker at Mediators Beyond Borders, and was the inaugural lecturer at the Forrest S. Mosten Peace Studies Program at UC Riverside. He is a recipient of the ABA Lawyer as Problem Solver Award, ABA Lifetime Legal Access Award, was 2009 ABA Frank Sander Co-Lecturer, and is internationally recognized as the “Father of Unbundling.” Woody can be reached at www.mostenmediation.com.

PEACEMAKING VALUES	YOUR PERSONAL CORE VALUE	NEGOTIATION STRATEGIES	WORKING WITH COLLEAGUES
Peace	Believe in peace in your own life and attempt to Walk the Walk.	Use peace as an organizing value for parties and their children to point out commonality and provide settlement proposals to prevent family conflict and promote family harmony.	Discuss and share individual and common visions of peace for our clients, Collaborative community, and within our society. This is not a one-time conversation.
Empowerment	Believe that people should have control over their own lives.	Provide and test for client empowerment at every stage in the Collaborative process and in every Settlement Provision.	Respect the integrity and empowerment of all team members, proactively and willingly share power and control with other colleagues, and support and acknowledge colleagues who support differing models and perspectives.
Collaboration	Believe that people do better and are better when they work effectively with each other.	Teach parties to work together and treat clients and other family members and professionals as equal partners.	Generously share insights and materials with colleagues and treat them as allies, not competitors.
Hope	Believe in the possible and share this belief with others.	Tirelessly inject hope when pessimism creeps in and overcomes parties and other professionals.	Be optimistic in building CL in your Practice Group and with non-CL professional colleagues.
Healing	Believe that wounded people and relationships within the family can be restored and improved.	Be open and encourage repair of the family as a top priority in building other settlement terms.	Work toward reconciliation with CL colleagues after hurtful policy disputes or bruised emotions—to heal, prevent future conflict, and lay the foundation for a peaceful professional community.