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CHAPTER 12

Be a Peacemaker

There is a great and growing desire a renewed commitment to ethical and spiritual values, that resolves conflicts peaceably, employing dialogue and non-violence, that upholds human rights and human dignity as well as human responsibility.

—*Tenzin Gyatso, H.H. the XIVth Dalai Lama*

You now have the perspectives, concepts, and skills to work with clients and other professionals to produce informed, fair, and lasting agreements. You also have an opportunity to establish a lucrative and sustainable professional practice. As you cultivate your practice in the years to come, your skills will continue to develop and evolve and you will inspire the next generation of collaborative practitioners.

This is good. This is very good. But it is not the end of your journey. Frankly, if over the next 20 years you merely facilitate divorce settlements more effectively and build a profitable practice, you will still be treading the same path that traditional divorce professionals have been doing for decades. What would you need to do to take your professional identity to the next level? Not just to glide, but to soar?

You have an opportunity to help families and to improve your own life that goes far beyond settling divorces and making your living more sanely. Just as the absence of war does not constitute peace, helping divorcing people stay out of court does not make you a peacemaker. If you reach just a bit further—reach to become a peacemaker—you have a profound chance to transform the lives of the families you serve as well as your own. On Monday morning, start thoughtfully and deliberately down a peacemaking path.

What Is a Peacemaker?

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

Peacemaking, therefore, as we envision it, is an active process. Peace does not just happen. It is the product of concrete and deliberate words, acts, and choices. Harmony is, at its essence, allowing individual voices to ring out together to create a collective whole. It requires listening. The individual voices are essential. If any individual voice is weak or silenced, the resulting music will be that much more anemic, and it is in the collective interest to repair and restore it. Harmony in the family means that the system as a whole functions and that each person in that system functions within it. When we choose to be peacemakers, we commit ourselves to working deliberately toward a world in which we function together as the sum of individual voices, each of which is integral to the beauty and success of the whole.

Many lawyers are peacemakers; many are not. Peacemakers can be litigators, teachers, negotiators, or client counselors. Lawyer peacemakers come from all backgrounds, and there is no litmus test to earn your peacemaker card. Being a peacemaker is not defined by what role you play, but by how you actively restore and create harmony in your interactions with clients, colleagues, opposing parties, children and other members of the family, judges, court staff, witnesses, experts, and others in your community. Peacemaking is not a process, but a set of values, personal attributes, goals, and behaviors that guide your work. In other words, your core values as expressed through your work as a family lawyer will define whether you are a peacemaker. Peacemaking means devoting lawyering efforts to the improvement and repair of the parties’ individual lives, repair of their relationships, and prevention of future conflict. So where should you begin? The following are some points of departure.

Foster Mindfulness

Peacemakers cultivate personal peace and mindfulness and harness their core values and strongest personal attributes. Over 25 years ago, Leonard Riskin wrote his groundbreaking book on ADR and lawyers. Although he has made many other important contributions to our field, perhaps his most enduring hallmark is his work on mindfulness. 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.” Mindfulness concentrates on helping us 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, and free us from habitual mindsets that hinder our creativity in negotiation or in the courtroom. Clark Freshman adds to this insight for our work during negotiation: “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.”ⁱⁱⁱ

Identify Your Core Values

Another of our field's most inspirational thinkers, Nan Waller Burnett, hails from the mental health field. Her groundbreaking book *Calm in the Face of the Storm*, devotes each of its 365 chapters to a peacemaking value and how to better understand it and apply it in our work. Exploring these core values to identify which ones resonate most with you will help you formulate a peacemaking signature.

[begin box]

Examples of use of key core values:

Empowerment—People should have control over their own destiny and reduce their dependence on professionals, courts, and other experts.

Cooperation—People work more effectively and are more satisfied when they are working together.

Fairness—People should get a fair shake out of life, and human action and institutions should be designed with fairness as an outcome.

Satisfaction—Although the customer may not always be right, what clients say and believe about their satisfaction is important in evaluating professional service.

Options—People do better with choice. Do you take the time to make sure that you and those around you have choices for what to have for breakfast to how to obtain and finance healthcare?

Creativity—The process of carving out time and devoting energy to create new ideas and opportunities is a value in and of itself.

Hope—Having a belief in the possible and believing it should be shared with others who are paralyzed with fear and pessimism.

Reconciliation—Actively seek out to apologize to others or to accept a heartfelt apology from someone who has hurt you or someone you care for.

Transformation—Believe that you and others can change for the better. In the divorcing context, such transformation can be facilitated and accelerated by the way the divorce is resolved.

Rational Problem Solving—People can find solutions by thinking through and talking about difficult issues.

Peacemaking—Peace and the act of being peaceful way toward those in pain and conflict are values to which you should devote time and energy.

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Although Burnett's book is intended for spiritual growth and comfort, you can adapt peacemaking values in developing a signature for your work with clients and professional colleagues. Burnett uses her daily themes as a loom on which she weaves a living definition of peacemaking. We have selected some of Burnett's daily themes and linked them with our vision of peacemaking values to offer strategies for integrating peacemaking in your work at the negotiation table and in collaboration with other family law professionals. As you review each value, read each of the steps aloud and then write out your answers as you develop them. Take

proactive steps to discuss these values with colleagues at conferences and lunches and with friends and family. This is not a one-time conversation—it will develop and evolve throughout the rest of your legal career.

(a) Explain each value and its importance in your work.

(b) Think about how you share and communicate each value with clients and colleagues and how you implement each value in your work.

(c) Ask yourself how each value can impact the process that you utilize to create settlements.

(d) Reflect on how you can implement each value into expanding the services that you offer to clients to increase your profitability.

1. **Peacemaking:** Do you believe that peace and the act of being peaceful toward those in pain and conflict are values in and of themselves? What impact can your direct application of peacemaking have on negotiations between divorcing spouses and on meeting their children's needs? Do you talk about peace with your clients, colleagues, clients, and staff and share with them a vision of peace in the world that goes beyond your professional practice? Do you design your office to invoke and foster peace for everyone who comes through the doors?
2. **Empowerment:** Do you believe that your clients should have control over their own destiny and should reduce their dependence on professionals, courts, and other experts? How do you develop protocols to help your clients gain such empowerment over their own parenting and financial decisions? What can you say and do to assist clients to gain empowerment given your expertise, experience and power as a professional? How do you assure that the other lawyer can be empowered to fully participate at the negotiation table? How do you use your commitment to client empowerment on your website, at initial meetings, and during other opportunities to grow your practice?
3. **Cooperation:** Do you believe that people work more effectively and are more satisfied when they are working together? What can you do to encourage your clients to cooperate with their spouses, especially when your clients are not feeling cooperative? How can you better cooperate with your colleagues in sharing practice materials that you have developed and referring cases that you do not want or cannot take on?
4. **Fairness:** How do you believe that fairness for everyone in the divorcing family fits in with your work? How do you approach your clients with the importance of "fairness" (as opposed to just getting the issue behind them)? What standards do you utilize to measure fairness in a divorce on any one issue and in a global settlement package? How do you react when you perceive that you have been treated unfairly by a colleague or a client (especially in a billing matter)?
5. **Satisfaction:** How important is the client's expressed (and unexpressed) satisfaction with the final settlement and with your competence, efforts, and fees in evaluating your professional services? How do you assess the satisfaction of clients? How do you reach out to your

colleagues to determine whether they are satisfied with you in handling their referrals and working with you on cases?

6. **Options:** How do you ensure that clients have a full array of options, opportunities, and help to make good choices? How do you employ options to determine different professional roles or fee structures that you make available to potential clients? Are you open to options that your staff can use to approach their working day and prevent burnout?
7. **Creativity:** As you start each day, what efforts do you make to approach people and problems in a different way? What innovative methods do you use to support clients to design their own solutions creatively? When you host a meeting at your office, what creative ideas do you employ to make everyone comfortable and to set the stage for a successful settlement?
8. **Hope:** Do you have a positive view of the future, especially when the past has been negative? How do you share that forward-looking belief with others who are paralyzed with fear and pessimism? What strategies have you put in your toolbox to motivate clients with hope during setbacks in negotiations? After investing time and money to develop your practice, if you hit setbacks or a flat growth period, how do you remain hopeful for a successful future?
9. **Reconciliation:** What approach do you use with your clients to help them stay in or return to a relationships in their families? How do you actively encourage your clients to explore the possibility of apology and forgiveness? How do you reach out to apologize to clients, colleagues, and others when you believe you have caused hurt or acted badly? How do you accept a heartfelt apology or express forgiveness from a colleague who has hurt you in your professional life?
10. **Transformation:** How do you encourage your clients to change for the better during or after a divorce? How do you accelerate your own professional and personal change regarding interaction with your family law colleagues and ideas and developments generated in your field? How do you continually breathe new life into your law practice so that it remains cutting edge and stimulating for you?
11. **Rational Problem Solving:** How do you bring about solutions to seemingly intractable problems by thinking through and talking about difficult issues? How do you motivate discussions when tough issues and a gap between positions verge on impasse? How do you increase your profitability when you want to take more time for vacations and self-renewal (to prevent burnout) when the costs of running a law practice continue to escalate?
12. **Trust:** What are your feelings about the importance of building trust between your client who is hostile to his or her spouse and the spouse to create lasting agreements and healthy relationships? How do you reestablish or initiate trust with the other lawyer? How do you react when you believe that your trust has been betrayed by a member of your staff or by a colleague?
13. **Compassion:** How do sympathy and concern for the misfortune of others impact your daily work? How do you demonstrate compassion for your client, the other party, and the other lawyer? If colleagues are struggling with their clients or with you in your case or in their personal lives, how do you express compassion for them?

You may have other core values that are not on this list, such as love and belief in family/children; devotion to a divine being or religion; commitment to economic justice and fair distribution of wealth; preservation of natural resources and our planet; or the eradication of

tyranny, mass disease, or other social ills. Whatever your core values may be, think about how you can incorporate them into your work as a family lawyer.

Actively Prevent Future Conflict

Perhaps the greatest difference you can make as a peacemaker is to add conflict prevention to your lawyering work. By the time people enter into mediation, there has already been a failure because a dispute has escalated to the point that requires a mediator's intervention. Just as doctors try to prevent relapse or recurrence and promote future health when treating the symptoms of illness or disease, it is our duty and opportunity to help our clients minimize future recurrence of conflict and maximize future harmony. We can do that using tools such as dispute resolution clauses in contracts between parties, agreement implementation calendars to remind parties about what they have agreed to (and find out if additional facilitation is necessary), and conflict-wellness checkups (for examples, see www.mostenmediation.com/legal/wellness.html) as discussed in Chapter 11.

Apply Peacemaking to Your Daily Lawyering Work

You are in charge of whether there is a next step in moving toward peacemaking rather than just settling cases. If your choice is affirmative, the following are some avenues in which you might walk your peacemaking walk.

Get Training in Mediation and Collaborative Law

If you have spent most of your professional career learning substantive family law and how to write court motions and to better conduct cross-examination, you may need to go back to school to learn new skills and perspectives. If you invest the time and money to take such training, you will be learning more than the curriculum in your bulky training manual. The relationships you form during training seminars can give you support in your new career path. You will have a shared experiences and a common set of skills. During the training, pay attention to the other participants as much as to the material and process. Arrive early and stay late (as much as possible given your other responsibilities). Be open to invitations to go off-site for lunch or an evening meal. Treat training like a trip out of town so that you are not distracted by calls or other obligations of your practice. Follow up after the course with other training participants. They can be your core for a study group or structured reading program for representing clients in a peacemaking way.

Collaborate with Peacemaking Lawyers, Mediators, and Other Professionals

Generally, peacemaking lawyers are generous to colleagues. Be ready to accept an invitation to observe as a fly on the wall, attend a meeting or conference of a local interdisciplinary organization, or adapt the practice materials of others to your evolving family law practice. And be sure to return the favor. The input by another family lawyer or mediator about your performance in a recent case can be invaluable to you. Your reciprocal feedback can bring new ideas and approaches to your colleagues' work. Follow up on the help from your colleagues with acknowledgments for their generosity. Send them clippings or forward e-mail links that you believe will be helpful to them. Building your practice and reputation can have payoffs for

decades to come.

Honor Your Colleagues

In this book, we have suggested the following mantra when reviewing mediated settlements: “Let it go!” This means that “winning” is not pushing every technical point or making sure that no money is left on the table. “Winning” means making sure that your client understands trade-offs and is comfortable with the overall deal.

The same mantra, “Let It Go,” applies to working with other lawyers in your community. You might observe that a lawyer has intimidated your client. Let it go. If you hear the other lawyer misstating the rules for calculating capital gain on a family residence, let it go. Letting it go does *not* mean that you will be negligent or dilatory in making sure that your client gets proper information or is treated respectfully. Letting it go *does* mean that the goodwill and relationship of colleagues may mean more in the long run (including this case) than “calling out” someone and causing a loss of face or respect. Private debriefing sessions are the place to discuss what worked and what can be done better next time. Gentle humor can be an invaluable and disarming method of making a point about civility without attacking or putting someone on the defensive. Just as clients have relationship “accounts,” so do colleagues

After one challenging settlement conference at Liz’s office, knowing that the opposing attorneys had traveled far and were likely to get stuck in rush hour traffic if they drove straight home, she invited them to the restaurant downstairs for a drink. Everyone was able to move beyond the intractability and frustrations of the day and enjoy one another’s company and insights in a spirit of mutual respect and collegiality. One of the opposing attorneys, who had been practicing law for over 30 years, commented at the end of the evening that this was the first time he had ever received this kind of invitation from another attorney after a settlement conference. You always try to make deposits of positive acknowledgment and good acts and try to minimize withdrawals due to unnecessary conflicts or control struggles. It is a difficult balance, but one from which you and your family law colleagues will benefit and better enjoy your work.

Contribute to Family Law Organizations

In working with colleagues on issues of importance to our field, perhaps you have experienced or observed turf struggles and adversarial wrangling over issues that affect us and the public.

Our colleagues have strong views about issues that can be viewed from different perspectives. Regardless of the importance of any one issue, it is important that we dialogue rather than confrontationally debate these issues (see Linda Ellinor and Glenna Gerard, *Dialogue* 1998). How we speak with each other is not less important than the points we want to make. We need to watch the tone of our public discourse on listservs and during organizational outreach. We should stress our commonality and form alliances with other organizations and professionals regardless of differences over any one issue. Just like at the table with our clients, our model is more than what we say. Collaboration with colleagues has its own rewards, many of which are unforeseen at the time.

One doesn’t have to hunt for concrete opportunities to work positively with family law colleagues toward common goals. There are nonprofit family law organizations in most

communities that need committed, ethical support, and help. Promoting access to family law services for the indigent and working poor is one way in which collaborative efforts by family law professionals can effect positive change.

Your Next Steps in Using Peacemaking to Improve and Expand Your Practice

As lawyers, we often suggest to the parties we serve that they consider the “next steps” to take in implementing their agreement. A pledge to take “next steps,” especially when they are specific and concrete, is an essential key to making key changes. Here are some “next steps” that can be taken to transform your lawyering work into peacemaking:

1. Make peacemaking your life’s work. Talk about it; study it; create a personal mission statement. Create a career plan and have a vision of your role in the field—5, 10, 20, and 30 years from now.
2. Perform a peacemaker impact study in the work you do. Test every projected plan to gain skills, help your clients, or build your practice by whether and how such a plan reflects peacemaking.
3. Add new roles or services within your current job or practice to enhance peacemaking. For example, think about how to educate members of your local bar association Family Law Section about peacemaking or consider developing a mentoring program to help local lawyers who are going through disputes with each other or in their personal lives.
4. Become a preventive conflict-wellness thinker and provider. Use the preventive legal wellness checkup when clients first come in and after you have helped them achieve a settlement. Test settlement terms by how they will help restore future peace in the family.
5. Constantly reflect on your own professional behavior and monitor your humility and openness to new approaches. Make sure you treat your staff, court clerks, and clients’ meddlesome extended family members with the same respect you offer to esteemed colleagues and others you value highly.
6. Embrace others through the implementation of peacemaking values. This can be a challenging and often lonely profession. We need mutual help and support—and to be reminded daily of the core values that shape our work, improve

ⁱ Merriam-Webster Online.

ⁱⁱ Ibid.