

Family Law Practitioners Must Nurture, Not Wield Poison Pens

By Stacy D. Phillips
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The Chinese character for "Mother" is a bottle of poison with a line through it. The Chinese believe that a mother does not poison. She nurtures her children and those around her and makes the poison go away.

We propose that "mothering" should become the new philosophy for family law counsel in their interaction with clients, opposing counsel and judges. This means no more "poison pens." Instead, the lawyer should constantly assess whether the words used in documents are an antidote, or a toxin.

In working with parents and children in divorce cases, the ability to persuade a judge with a poison pen only addresses the end result — winning the case. Destructive words uttered by one parent about the other do little more than taint the well for the family. The effect does not just impact family life until the children reach 18, but carries over into the adult lifetimes of children when they become parents.

Lethal words cannot remedy the process families go through in a divorce situation. In cases in which children's issues are central (custody, visitation, child support and therapy) the poison-pen approach simply does not work.

When children are at issue — whether the lawyer is representing the mother or the father — the focus must shift from using the poisoned pen to being an advocate who does not allow the divorce process to contaminate the children or the family. This can be accomplished through mediation, therapeutic intervention, hands-on involvement and ongoing settlement discussions.

Mediation represents some of the finest mothering lawyers can accomplish. The lawyer is able to nurture the parties by understanding their psychological, emotional and financial needs (and those of their children) and is able to guide the parties through a process of resolution and completion, with the parties themselves being empowered to make their own decisions.

Unfortunately, some attorneys

are afraid to discuss mediation with their clients. They believe that they lose control of the case if they refer their clients to mediation. However, if attorneys are trying to control their cases and clients (and opposing counsel and their clients), they persist wrongfully in filling the bottle with venom.

When representing a party participating in mediation, the lawyer must view the process as a partnership between the lawyer as the party's advocate and the mediator. If divorcing parents can agree to mediate, they are involved in a process that goes at their pace, taking into account their individual psychological and emotional components.

Mediation is also a critical parenting tool. Parties who have children should work with a mediator-therapist on parenting issues. This work should result in fewer problems with visitation, and enhances the parties' communication with each other. Not surprisingly, when communication is enhanced between parents about their children, parents are able to transition to communicating successfully with each

other about other issues.

Clients also should be encouraged to have a separate therapist for their own psychological support. To ensure collaboration, the lawyer should interact with that therapist to understand what the client wants to accomplish.

One of the dangers in family law is misreading a client. A client could be telling you one thing but feeling something else. It is important to really know the client's concerns and what he or she is feeling; if not, a lawyer cannot accomplish a settlement on behalf of that client nor properly communicate to the court what he or she wants.

Legal mothering also promotes ongoing settlement discussions with opposing counsel. Lawyers should make sure that clients tell them in writing what they want and that they communicate settlement terms to the other side. The lawyer also should regularly meet in person with the client. It is easy to communicate only by telephone, fax or e-mail; however, it is important to meet with the client face-to-face to get the entire picture of what the client is thinking and feeling.

Working with clients in family law

should also expand a lawyer's desire to use mothering skills in the community. Lawyers need to support local organizations that provide legal, emotional and emergency assistance to parents and families.

The practice of family law must be a collaborative process, not only between attorneys working toward settlement, but among attorneys, mediators and therapists. Family law must view itself as a family unit with different professionals giving their input and advice, all of whom are committed to resolution without acrimony.

Family lawyers have a responsibility to remove the poison from the divorce process. By being sensitive to our own actions, family law counsel can foster healthy, happy children and parents who continue to be integrated into the lives of their children.

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Forum

Mother Knows Best

LOS ANGELES DAILY JOURNAL • TUESDAY, APRIL 6, 1999 • PAGE 6

