"First, Do No Harm"

The Virtues of Collaborative Practice

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The Hippocratic Oath subscribed to by newly-minted physicians since the inception of the modern medical profession states first and foremost that the paramount duty of the physician is "to do no harm." Would it were that the same solemn professional duty were incorporated in the Oath of Attorney as sworn to by new Washington lawyers.

In almost any field of legal practice, great harm can be inflicted upon clients by their lawyers. That is why lawyers carry malpractice insurance, and why the Washington State Bar Association requires us to meet continuing legal education standards to maintain bar admission.

For the family law practitioner, and for those whose practices involve probate, or an array of civil transactional disputes, a profound risk of harm we pose to our clients is an organic byproduct of a professional model of adversarial practice in which advocacy for the client consists of strategic gamesmanship, thrives on mutual mistrust, all aimed at producing at least the superficial illusion of a "winner." All too often, winning comes at a cost, both in legal fees and intangible collateral damage, that outweighs any material benefit of "winning" a hard-fought legal battle. Crushing legal fees aside, a courtroom triumph that is achieved only by inflicting sometimes permanent fractures of significant personal, business, and familial relationships can be very hollow victory indeed.

Fortunately, a viable alternative to traditional civil practice has been growing in Pierce County, particularly, though not exclusively, among family law attorneys. Nearly six years ago, a group of Pierce County attorneys began meeting regularly to become trained in and to promote the practice of "Collaborative Law," now more commonly referred to as "Collaborative Practice."

A growing number of Pierce County family law attorneys in particular have enthusiastically embraced the Collaborative Practice model, focusing on the resolution of family law matters not through traditional litigation, but in a forum outside of the courts, in which both clients and counsel work together, often with non-lawyer professionals, to find resolutions of the many legal, emotional, financial, and familial issues underlying marriage dissolution, parentage actions, and other family law matter.

The positive distinctions between the Collaborative model and the traditional, adversarial model are many, and include the parties' preservation of personal dignity, mutual-respect, and privacy. Another frequently cited benefit of the Collaborative model, especially in domestic relations matters involving children, is that it fosters and promotes a heighted level of communication, cooperation, and trust between divorcing or decoupling parents, greatly enhancing their abilities to flourish as co-parents long after their legal issues are resolved, and a final decree is entered by the Court.

Perhaps a more significant distinction, however, between family law as practiced in the adversarial court-based model, and family law as practiced in the Collaborative model, is often overlooked in discussions of the benefits of the Collaborative model. That distinction is the commitment of the qualified and experienced Collaborative practitioner to the clients' preservation of something we in the Collaborative Practice community refer to as the "third estate," sometimes also known as the "familial estate" or "relational estate." This concept has been written about by Pauline H. Tesler, the San Francisco Bay Area family law practitioner who many years ago transformed her career as a respected litigator to that of internationally renowned Collaborative practitioner, trainer, and author, and from whom I and many other Pierce County Collaborative practitioners have received many hours of intensive and invaluable Collaborative practice training.

The "third estate," as Tesler has written in her seminal book, *Collaborative Law,* derives its name from the premise that in the adversarial model of divorce, "the lawyers' work focuses on identifying and allocating interests in two estates, the marital and the separate, owned the parties." Tesler describes the "third estate" as primarily consisting of the divorcing couple's personal relationships with the many people in their lives other than themselves and their children. These external relationships include those with the family members of each spouse, as well as with mutual friends, associates, and other persons who have been part of the couple's married life. The significance of the "third estate" is also applicable in legal matters involving parentage or domestic partnerships.

Collaborative practitioners respect the fact that marriage dissolutions involve much more than the legal issues with which conventional practitioners routinely deal. People going through the deeply emotional process of terminating a marriage have many more valid concerns and issues than the valuation and allocation of assets and debt; the residential schedule for their children; whether one former spouse must pay maintenance or other financial reparations to the other. Humans are far more complex than that; their needs in the marriage dissolution process are much more expansive. Those needs warrant the family law attorney's skillful attention to much more than the rudimentary transactional and statutory issues generally dealt with in the traditional adversarial arena of divorce litigation. Only Collaborative Practice meets those needs.

You don't have to be a lawyer to facilitate a fight between two people. You don't even have to be an adult. Any kid on an elementary school playground can do that. Anyone smart enough to become a lawyer can, under the guise of advocacy for any given client, promote the negative and intense emotions of a client going through a divorce. In the traditional adversarial model of marriage dissolution, a model to which most family law attorneys continue to exclusively adhere, the poisonous venom of raw emotion, bitter acrimony, and immature personal conduct is allowed to dominate, and even define, the demise of the single most important human relationship most people will ever have. Two adults who once loved one another, lived together, had children together, are permitted, and often encouraged, to make the transition to being former spouses not in an environment of dignity, cooperation, mutual respect, and peace, but instead in an adversarial legal forum fueled ultimately by a costly, cruel illusion of "winning."

Again, we see the great paradox of traditional, adversarial family law practice. The greater the experience and competence of the family law litigator, the more acutely aware that lawyer is of an underlying, inescapable truth of family law litigation: the outcome for the client will be measured not by "winning," but only by degrees of loss.

At the end of my career as a family law practitioner, I want nothing more than the satisfaction of knowing that I did more good than harm. I want to know that my professional training and skills were employed to make a positive difference in the changing lives of my clients and their families. I want to know that I played a role in my clients' successful commitment to co-parenting skills, and careful preservation of important relationships with extended family members, friends, and others in moving forward after a troubled marriage, or other domestic relationship had come to an end.

Most of all, I hope to end my career knowing, as does the skilled and successful physician, that I have done my best to honor my own professional and personal commitment to "do no harm." Only as a Collaborative Practitioner will I be able to do so.