

A Recovering Litigator's Story

"Can you describe the nature of your relationship with your spouse?" It was a question my assistant had been trained to ask potential new clients ("PNC's") when they called the office to inquire if they could hire me to assist them with their divorce.

The question usually brought an uneasy, startled response from the person on the other line. Did you say "can you describe the nature of your relationship with your spouse?" was not an uncommon immediate response. "I just told you my husband has asked me for a divorce; that I am devastated and that I need help to protect myself from him." Or, "We're getting a divorce, what do you think the nature of our relationship is at this point?" Or, "What do you mean?"

Just from the content, the tone, the intensity of these varied responses, Linda already had an idea of whether this client would eventually become a collaborative client, a mediation client, or, not a client of mine at all.

" I mean,

' Do you and your spouse still live in the same household?'

'Do you and your spouse find it difficult to speak to one another directly?'

'Do you and your spouse speak easily to one another about your divorce?'

' When was the last time you and your spouse spoke about ending your marriage?'

' Have you and your spouse spoken about the way you wish to make the transition from a married couple to unmarried persons; an intact family living under one roof to a transitioned family living in two households?''

The PNC's who eventually hire me usually stop at this point, take a deep breath and start asking questions themselves, start answering questions thoughtfully, consciously. They usually accept Linda's invitation to "Come in, speak with Judi, and she will explain to you how you and your family can go through your divorce honorably, respectfully."

So it has been in transitioning my practice from twenty years of practice with couples who chose to divorce in court and my practice of the last two and one-half years with couples who chose "no court divorce".

It is the purpose of this article to describe one practitioner's transition from a family law practice that included, actually was dominated by, preparation for court, negotiations between counsel "on behalf of clients", to a client-centered practice of assisting others in reaching deeply within themselves to find answers that they already knew. It is also the story of an individual entering the "second half of life" and evaluating the manner in which she wished to spend her professional life, a manner which would serve her as a whole person. It is a true story. It is a happy story. It is the story of one person's calling.

When I first spoke to a colleague, many years ago, about this new method called collaborative divorce, I was intrigued. It certainly spoke to my inner Self, it seemed too good to be true. However, at

that time, I didn't accept the invitation to obtain training, to join his local practice group. I told myself that I wouldn't be able to make the transition to such a method, I didn't have time to change the focus, the tempo, of my practice, I would have to turn down lucrative opportunities in order to transition my practice from litigation. I reminded myself that I had taken the time some years before then to participate in a mediation training with 12 or so other practitioners, and that nothing much had come from this training. I perused my case list and noted that I had only one or two occasional mediations. Clearly, all this talk about learning about a better way to divorce was just so much chatter; that I couldn't afford to stray from the tried and true method of assisting parties going through divorces; that people needed me to insure that they were "taken care of" and "not taken advantage of"; that judges would clearly see things my clients' way and make orders that were reasoned and in my clients' best interest.

I reassured myself as I stayed up late the week before trials going over cross examination notes, direct testimony notes, combing through depositions for rebuttal questions, for the "smoking guns" that would make my client's case, that would result in a happy result, that I would be able to make the judge, the trier of fact, see things from my client's point of view, that my client would emerge from the courtroom happy with the result. Time and time again I emerged from those courtrooms confused about the result, trying to explain to my client why the result was a great victory for him/her, trying to assure myself that I had done everything I could to get EVERYTHING my client wanted, and later, when I lay awake in the middle of the night wondering why I didn't get that ONE MORE THING my client wanted, why I hadn't anticipated that one train of thought the judge kept trained on throughout the trial, it finally occurred to me that it was not my mission in life, my job, my role, to live up to someone else's expectations in life, to be someone's mouthpiece, to argue a position on behalf of a client whether I believed in it or not.

I came to the realization that living to fulfill another's expectations, desires, wants, to live under such stress that if the trial was on Friday all I could focus on sometimes was "keep calm, keep your eye on the ball, it will soon be Saturday," was no way to live at all. I had had enough. It was time to accept that invitation, to change my practice, my life. I signed up for and participated in a three-day collaborative practice basic training. The training enthused me tremendously about this new way to assist people in "no court divorce". I called my colleague of those several years before and told him that I was now trained and would like to apply for membership in his practice group. He encouraged me to do so. I was accepted into membership.

I began marketing my new-found practice model by asking my assistant to provide me a report of everyone who had referred a client to me in the last five years.¹ I then drafted a letter that we sent to each of these referral sources explaining to them the change I was making to my practice, explaining in detail the collaborative model, and encouraging them to keep me in mind in the future when they came upon a person who was about to go through a divorce. I sent them a brochure on the collaborative model and asked them to feel free to call my office for more copies of the brochure for their reception area. Approximately two weeks after the letters went out, I began calling the people to whom I had sent these initial letters to talk to them about my new enthusiasm for the collaborative model. I invited them out for lunches to further discuss this new model. I granted their requests for more brochures.

¹ It was and still is my custom to keep accurate records of everyone who refers a client to me, whether that potential new clients actually becomes a client of mine or not. I send a written note to each person who refers a client to me thanking them for their confidence. I also have my staff keep track of these individuals by name, and by client(s) referred to me. In the past I have acknowledged their kindness by hosting a party at the end of the year to celebrate.

I volunteered to run for secretary of the Collaborative Family Law Group of San Diego after having successfully attained a position on its board of directors. I found that by working as the secretary and taking notes about notions and people I knew very slightly, my knowledge of the model, the people involved in the movement, and the community that was enthused about this new method grew much more rapidly than it would have otherwise. I volunteered to serve on any and all committees as they formed. If I came upon an idea that seemed to be missing in the organization, I championed a new committee, and if no one was willing to serve as its chair, I chaired it and sought like-minded members to people the committee and further its goals.

After the first year of working with my practice group, talking to people about the model, seeking any and all opportunities to speak to groups (from three or four to more than a hundred, from Rotary Clubs, to East County Lawyers Club, to employment relations groups, to joining the Alternative Dispute Resolution section of the county bar association), I still had no cases. I was disappointed; disheartened. I still found myself up late at nights preparing cross-examinations, direct testimony, rebuttal testimony, combing through depositions. My mediations were growing, which surprised, and delighted me. But still, I had no collaborative cases.

I was tempted to go back to my original impression that this was not a viable path for me. I was tempted to double up my efforts to be as effective a trial lawyer as I could become and be satisfied with assisting clients in obtaining the most reasonable results in trial if I could not settle cases. I was tempted to withdraw from my collaborative practice group, re-double my efforts to develop my mediation practice, and be content with a blended mediation/litigation practice. But something about this model wouldn't leave me alone. I determined to give it one more year to see if I could break into this new revolutionary model.

As the year drew on and I continued to talk to anyone who was interested in this new model, and as I continued to keep notes at meetings, and as I continued to work within committees to develop a method for keeping greatly needed records on cases as they came in, worked within committees to fine tune membership criteria, helped formulate a first-ever holiday party, an annual Retreat in the summer, and other worthwhile projects, I became nervous as I still had no collaborative cases.

And then one day a colleague called to tell me that he had just spoken to a potential client who was interested in the collaborative model and that he had suggested, along with several other names, that I might be a good candidate as the client's collaborative counsel. I was elated. And then the call came in. The client made an appointment. And, the client signed my first collaborative engagement agreement.

And, then, no more cases came that year.

The next year I determined that I would take no more litigated cases. If I was going to move toward a practice that offered solely mediation and collaboration, I had to begin to refuse litigated cases altogether. The thought of turning down a large retainer and a case that previously would represent a large portion of my annual revenue, was frightening, chilling, devastating, dumbfounding. It was very difficult to form the words in my mind, "I am not the person for you, let me help you find a litigator that I trust and who will assist you in the most conscious way possible," then to allow them to transmit to my mouth and then to actually SAY THEM OUT LOUD. I practiced at home, in the shower, on the way to the office, at lunch during an occasional run. And then I started saying them to potential clients. Many of them went to the litigators that I had referred them to. But some said, no, I feel that I want to work with you, tell me more about that collaborative model you were telling me about.

And, I was on another team, and another team, and another team. Today my staff is significantly smaller, my revenues are less, I work four days instead of five, my staff reports that she finds it easier to answer the phone, looks forward to coming to work more, and sees a difference in my temperament, my demeanor, my general outlook.

If you resonate with anything I have shared with you here, think long and hard about your own transition. It may not mirror mine. Or, it may. I wish you a conscious journey toward a successful and centered approach in your practice. If you think you might benefit from a moment or two with me, call, I still like to have lunch with colleagues. I have more time for it these days.

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