



## CHAIRPERSON'S MESSAGE

By LISA SULLIVAN

CHAIR, FAMILY LAW SECTION

***BE CAREFUL WHEN SPEAKING.  
YOU CREATE THE WORLD AROUND  
YOU WITH YOUR WORDS.  
– FROM THE NAVAJO***

I saw the saddest face the other day during a guardianship proceeding. In a dispute over parenting time, a mother proclaimed, in the presence of her daughter, that if she didn't get what she wanted, she wanted no time at all. I swear I heard that young girl's heart break. Nothing demonstrates the power and the impact of our words as much as the reactions of a child.

Many of you know that I have a 7-year-old, Ryan (in whom the sun rises and sets). Over the years, I have been entertained by our conversations. It amazes me how he picks up phrases and inflections, many of which I recognize as my own. Imitation can certainly be a sincere form of flattery, but, on occasion, it can be a reality check. There are times when I recognize in him an unpleasantness that makes me bristle. (Although I'd like to attribute any negative trait to his father, I can't deny that some of his imprinting is uniquely mine.) Had Ryan had the same reaction when I directed that unpleasantness toward him?

Words are extremely important in our profession. We are wordsmiths. We use them to communicate to our clients, our adversaries, and the courts. It is important that we select the correct words because there are so many terms of art. Moreover, each case is different. Some clients need a soft touch; some clients demand a firm stance. Ultimately, our words are the means by which we obtain results. But, in trying to obtain those results, what kind of professional world are we creating around us? What kind of aftermath are we creating for our clients and their children? Children are not the only ones who are impacted. Is it really necessary to solicit testimony that one spouse is no longer in love with the other, particularly since Michigan is a no-fault state? Can't we be skilled enough to build a case for a client without tearing down the dignity of the opponent?

I often hear attorneys justify unpalatable conduct with reminders that the Michigan Rules of Professional Conduct impose a duty to zealously represent clients. It is true that MRPC 1.3 requires an attorney to act with zeal when advocating for a client. However, "zeal" is defined as diligent devotion to a cause. I think too often attorneys confuse zeal with "aggressiveness," which is a forceful, hostile action. Although attorneys have a duty to act with zeal, the rules of professional conduct wisely temper this duty. MRPC 1.2 makes it clear that an attorney is not in violation of the scope of representation by avoiding offensive contacts, and MRPC 6.5 mandates that an attorney shall treat with courtesy and respect all persons involved in the legal process, which includes avoiding offensive personalities.

Those of us who are devoted to family law understand the uniqueness of these cases. We do not represent litigants who go their separate ways at the day's end. Although we have limited involvement with them after a judgment is entered, they continue co-parenting and socializing for the sake of their children. Therefore, to leave these families with echoes of mean-spirited words and accusations is a disservice to them.

Instead, we can use our words to assist these parties to manage their conflict in a more positive manner. In fact, some of the best – and most effective – attorneys are those who are kind and respectful to opposing parties. To this end, I am encouraged by the increased use of alternative dispute resolution (ADR), and the interest within our profession to hone mediation skills in family law cases. For the past several years, the Family Law Section and ICLE have cosponsored a 40-hour domestic mediation training, which has been highly successful. By popular demand, another session will be held on January 24, - 28, 2006 in Plymouth. Similarly, I am pleased that the Fourth Annual Family Law Institute, which will be held at the Dearborn Inn on November 17 and 18, 2005, includes a separate track dedicated, in part, to ADR.

The importance of our communication skills impacts our profession beyond the cases we litigate. It occurred to me, at the October Family Law Council meeting, that our most challenging exchanges may be during our advocacy efforts before the Legislature. Kent Weichmann, who chairs the

Section's Legislation Committee, reported on his testimony before the House Committee on Children and Family Services. Kent was in the unfavorable position of being the only person opposing this bill before a panel of Committee members who were intent on passing the legislation that day. Despite the fact that Kent was articulate and respectful, his comments were not persuasive. Interestingly enough, however, his arguments were included in almost every article, covering that hearing. It was important that the Section participated in that hearing, and that the family law practitioner's point of view was heard on a family law issue. That hearing was not the first time that the Section's position was not adopted. Although it can be frustrating not to prevail on some of these issues, the Section has often been successful in impacting legislation at some point in the process because it has engaged in a civil dialogue with our Senators and Representatives. Its success is, also, attributable to our lobbyist, Bill Kandler of Cusmano, Kandler and Reed, who provides sage and candid advice to us in our endeavors.

Before I go on, I have to digress. Recently, Bill lost his mother. Our thoughts and prayers are with Bill and his family as they grieve this loss.

As an update on the Section's advocacy efforts, and as an example of how our profession may be impacted, on October 6<sup>th</sup>, Representatives Mortimer, Gosselin, Hoogendyk, Sheen, VanderVeen, Huizenga, Hummel, Ward, Taub, Caswell, and Gaffney introduced HB 5267 which would require a court to order joint custody unless there is clear and convincing

evidence that one parent is unfit, unwilling, or unable to care for the child. The entire bill can be accessed through the following website: [www.legislature.mi.gov](http://www.legislature.mi.gov). This bill has not yet come before Council for a vote. Therefore, I would encourage you to participate in our process, either through the Legislation Committee, chaired by Kent Weichmann, or by attending our November 5<sup>th</sup> meeting in Lansing. Further, once Council takes a position, we would ask all of you to use your communication skills to contact your Representatives and Senators in support of the Section's position. Remember **5** contacts can make a difference!

Finally, as October sets in, I am going to take a moment to advocate for the Section's Mid-Winter Seminar. This year, the Section trip will be to Punta Cana, Dominican Republic. For those of you who attended recent Mid-Winter and Mid-Summer seminars, you know that the materials presented at these seminars are first-rate. (In fact, the Section went into a second printing for the materials from the 2005 Mid-Summer Seminar.) And, what better place to absorb all this knowledge than an all-inclusive resort where you can absorb sun and camaraderie with your colleagues and their families. I was stopped by three family law attorneys just this week who have already visited Punta Cana. They were delighted with the accommodations, beaches, snorkeling, and food on their trips. (Did I mention that the food in the Dominican Republic was mentioned in a recent issue of Gourmet magazine?) If you are interested in joining us, please make your reservations soon. Spaces fill up fast and we are obligated to release unreserved rooms by a certain date. Hola!

