

Should Family Lawyers Take A Hippocratic Oath?

By **Rich Harris, Esq. and Javed Abbas**
HARRIS LAW FIRM

I will prescribe regimens for the good of my patients according to my ability and my judgment and never do harm to anyone.

Most graduating medical students swear to a modern version of this ancient moral guide, including the key admonition: "First, do no harm." It is time that we ask whether family law attorneys should abide by a similar credo.

Family law attorneys serve in a unique and critical role. People often come to us when their life is literally in crisis. They may face the loss of not only their marriage, but also their financial security and their child custody rights. Short of a death or a terminal illness of a loved one, a divorce may be the very worst thing that happens to someone in his or her lifetime. We see people in all states of emotional turmoil, and they are particularly vulnerable when they hire us to assist them.

Sadly, there are bad actors in our midst. Of course, this is true of any profession. However, when financial interests, or the all too common emotional desire to cause conflicts, motivate a family law attorney the client can



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easily fall prey to the desire to further the litigation. On virtually a daily basis, we see how unethical family law attorneys drive up billable hours to pad their wallets. Far too often, we also see how this particular practice area attracts personality profiles that feed off the anger and pettiness of conflict.

In prolonged conflict, clients waste a tremendous amount of money, and children often suffer the most. Indeed, studies have shown that the amount of conflict in a divorce has a direct relationship to the long-term emotional health of the family members.¹ Sometimes, this harm manifests itself years, if not decades, later.²

Good family law attorneys have a moral duty to explore solutions that keep battles out of the courtroom. In fact, one can argue that every family law attorney has a legal duty to mitigate harm to the involved family members.³ Certainly, we must safeguard our client's interests. However, we must make every reasonable effort to compromise, to find creative solutions, and to minimize our client's exposure to an adversarial system that, however well intended, can further the trauma of a family breakup.

¹ Carla B. Garrity & Mitchell A. Baris, *Caught in the Middle: Protecting Children of High-Conflict Divorce* (1994)

² Judith Wallenstein & Joan Kelly, *Surviving the Breakup: How Children and Parents Cope with Divorce* (1980)

³ See C.R.S. §§14-10-102 & 19-1-101, *State v. Moldovan*, 842 P.2d 220, 225 (Colo. 1992)

The good news is that most judges and critical thinkers agree that the best way to reform family law is to channel conflict away from the courtroom. The courts continue to implement methodologies and processes to further that goal.

In the past 20 years, there is a marked increase in alternative dispute resolution, including mediation, arbitration and negotiations. Where finances permit, many divorcing couples choose to utilize private judges to settle their matters more discreetly and efficiently. Trained mental health professionals serve a useful role in helping tailor parenting time and decision-making to meet the family's needs.

We can and should continue this trend. Family law attorneys can contribute to the improvement of this incredibly difficult process by pledging to "do no harm." Our future clients, and their children, are depending on us. •

— Rich Harris is the founder and managing partner of Harris Family Law Firm. He can be reached at 303-299-9484. Javed Abbas is a law clerk with Harris Family Law.

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