

THE COLLABORATOR

Newsletter of Collaborative Divorce Professionals, Inc.
www.WinWinDivorce.org

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President's Report

By S. Scott Haynes, J.D.

MANDATORY TRAINING WITH PAULINE TESLER ON NOVEMBER 5-6

On November 5 and 6, 2010, CDP, Inc. is hosting the First Annual Midwest Collaborative Divorce Workshop at Conference Center at North Pointe located at 9243 Columbus Pike, Lewis Center, Ohio 43035 (Route 23, three miles north of I-270). Pauline Tesler, J.D., a co-founder of the IACP and pioneer in collaborative law, will be our guest trainer.

In our conversations with Pauline she said that while she is considered an effective trainer, her best qualities are challenging unhelpful thought forms about collaborative practice and energizing practice communities. When we approached Pauline she said "I would be doing a disservice if I simply came and did a training without encouraging your board to plan a larger change strategy." Specifically she said that she was really only interested in doing a training for a group that is looking to take itself to the next level of development with a focus on a quality, well trained and competent membership. **That is the reason the Board of Directors decided that this training is mandatory for continued membership in good standing and listing on the website in 2011, and establishes minimum standards for the group.**

We are encouraged that the Collaborative Law Act will be approved by the State legislature and will be signed into law in the next term. When that happens, we as an organization want to be able to distinguish ourselves as THE organization the public looks to for collaborative professionals. I believe participation in this Workshop will demonstrate our commitment to excellence and minimum standards to the community.

When that law passes, many divorce lawyers in Central Ohio will call their webmasters and ask them to add "Collaborative Law" to the list of areas of practice. We as a group want to be able to emphasize that every person listed on www.WinWinDivorce.org has extensive training in the collaborative model and that our members are in the best position to shepherd a couple through a successful collaborative divorce.

Our fellow collaborative law groups in Cincinnati and Cleveland are excited about the opportunity to be part of this workshop. As of this writing, there are 41 total registrations, with 15 people from outside Central Ohio who have signed up and paid their tuition. This Workshop will make you a better collaborative practitioner. **Let's join others from around the State in our commitment to be the best trained advocates of Collaborative Divorce.**

EXPANDING THE PUBLIC'S AWARENESS OF www.WinWinDivorce.org

In August we began an advertising campaign on 610 WTVN for www.WinWinDivorce.org. Our goal is to increase the awareness of the public to collaborative professionals and collaborative law services in Central Ohio. Our ads are designed to drive traffic to our website and increase the number of collaborative cases for our membership. In conjunction with those ads, we developed a logo and the marketing slogan "Producing Solutions, Not Causalities" which is incorporated on the website and all of our marketing materials for the First Annual Midwest Collaborative Divorce Workshop. As President, I have endeavored to continue the goal of our immediate Past President Susan Moussi to refocus our energy from recruiting more group members to informing the public about availability of collaborative divorce professionals in Central Ohio.

Editor's Corner: Will You Be Ready to Meet the Challenges Arising from the Passage of the New Ohio Collaborative Law Act?

By Editor, Robert N. Wistner, J.D.

Now is the time for all good Collaborative Divorce Professionals to prepare to meet the imminent challenges of competence and increased case loads that will be presented in 2011 by the anticipated passage of the new Ohio Collaborative Law Act by the Ohio General Assembly. In October of this year the Chair of the House of Representatives Judiciary Committee received a letter from the Ohio Judicial Council stating unqualified support of the Domestic Relations Judges for the passage of HB 467, which was drafted and sponsored by the Ohio State Bar Association's Family Law Committee.

With the strong support of the DR Judges, and no other organized opposition, there is a chance that HB 467 may be passed in the lame duck session of the General Assembly starting in November of this year. However, if passage cannot be completed this year, the probability of an early passage next year is very high. Consequently, once the rest of the Family Lawyers in Ohio, who still are traditional divorce litigators, learn that Collaborative Divorce has become a widely accepted process that is available in all 88 counties, and is supported and promoted by their Judges, it also is likely that a lot of those litigators will start calling themselves Collaborative Family Lawyers -- but, without having any proper training or understanding of the Collaborative Process. Also, enactment of the new statutory law should generate substantial interest from the news media who will in turn educate the general public about the benefits of Collaborative Divorce compared to the negatives of the traditional litigated divorce.

Will you be prepared to handle an influx of new collaborative clients with confidence and competence? Will you be prepared to accept the challenge of separating yourself from the competition that will be created by the influx of untrained lawyers who are not really competent to provide quality collaborative process representation?

Your Editor wants to take this opportunity to commend our Officers and Board Members for demonstrating the foresight to provide all CDP members with the opportunity to meet both of these challenges by scheduling the forthcoming training seminar with Pauline Teslar, J.D. who is one of the founders of the International Academy of Collaborative Professionals, and the author of two books on the subject of Collaborative Practice. Also, by making attendance mandatory for continued CDP membership and website listing, they are giving the public the assurance that everyone listed on the CDP website will have the necessary training and experience to provide high quality representation in Collaborative Divorce cases. These benefits should make the payment of CDP membership dues for 2011 a worthwhile investment of time and money.

An Hour with Sherri Slovin Was an Hour Extremely Well Spent

By Bobbie Corley O'Keefe, J.D.

Those who attended the 2010-2011 kick-off luncheon at Tony's Restaurant on October 7 were treated to an enlightening and energetic presentation by Sherri Goren Slovin, J.D., current President of the International Academy of Collaborative Professionals (IACP). Sherri's program centered on the development of collaborative divorce practice groups and the evolution of the Cincinnati practice group.

It was quite a coup to get Sherri to Columbus to speak to us. Her position as president of the IACP takes her to places around the world to talking to groups of collaborative attorneys and legal professionals who live and practice in areas that are far more exciting than Columbus. In addition to her work with the IACP, Sherri has been involved in drafting Ohio's Collaborative Law Act, which is anticipated to pass the Ohio House and Senate in January 2011. Sherri reported that Ohio's Judicial Conference has endorsed the law, which was the last major step in assuring passage of this important new legislation.

One of the subjects of Sherri's speech that I found particularly helpful and reassuring was her discussion of the growing (and shrinking) pains most practice groups around the country have experienced. For example Sherri shared the approaches the Cincinnati practice group has taken in encouraging new and active membership. As a member of the CDP Inc. Board for several years now, I can attest to the many heated and spirited discussions we have had in board meetings about encouraging new members, and at the same time maintaining the quality of our product. Sherri talked about allowing new family law attorneys into the group without a minimum number of years of practice. To encourage active membership, the Cincinnati group has also established a point system for attendance at various meetings and activities, similar to ours. However, members have to earn a minimum number of points to be listed on the group's website.

Training was also one of the hot topics of Sherri's presentation. We all know that the clients who take a leap of faith with us in agreeing to a collaborative divorce are due the very best we can give them. Sherri affirmed how critically important it is for us all to be thoroughly trained and "on the same page" when we walk into the first collaborative 4-way (or 5- or 6-way) with our clients. Sherri suggested that the attorneys talk before meetings about such issues as discussing "the law," breaking an impasse, addressing hot buttons, to name just a few. Our individual and collective skill in guiding our clients through this process is possibly the most important aspect of a successful collaborative case. Therefore, Sherri urged us to maintain our ongoing commitment to collaborative law by attending as many trainings as possible.

Sherri also discussed the issue of little "c" collaborative cases versus capital "C" collaborative cases. For those who don't recognize those terms, a little "c" collaborative case is referred to by some as a case when the participation agreement is not signed. A capital "C" case is one where the participation agreement is signed. She emphatically cautioned us to take the position that a little "c" case is not a collaborative case at all. In fact, there is only one type of collaborative case, and that is one where the participation agreement is signed. It's just not possible to say that one is engaged in a collaborative case when no participation agreement is signed.

It is truly not possible to summarize all of Sherri's insightful comments. However, one of the last subjects she addressed was membership in the International Academy of Collaborative Professionals. The IACP is an extremely vital organization. Sherri stated that one of the best ways to stay abreast of new developments in collaborative law is to be a member of IACP. For example, the IACP recently hired an expert to review the standard participation agreement. The expert stated that the attorneys should not be parties to the agreement. As a result of his opinion, IACP has drafted a new suggested participation agreement, which is now posted on its website. IACP also routinely posts other new and important developments to keep collaborative attorneys current in the practice.

For the audience, the time spent with Sherri was definitely productive, entertaining and educational.

PRACTICE TIPS FROM OUR FINANCIAL EXPERTS:

You Say Alimony, and the IRS Rules...

**By Chrissie A. Powers, CPA/CFF, CFE, CVA
Managing Member, P.D. Eye Forensics, LLC**

Alimony can be a significant aspect of a collaborative divorce. Clients and legal counsel need to understand how alimony can impact the tax return. A temporary written agreement is important when determining the tax implications of cash payments for support during the period of negotiations preceding the execution of a separation agreement in a collaborative divorce, because the Internal Revenue Service will not allow deduction of such payments as alimony that were paid prior to the execution date of the separation agreement.

Alimony Requirements

Qualifying alimony payments are deductible by the payer and included in the spouse's or former spouse's income. In order for a payment to qualify as alimony by the IRS, all of the following requirements must be met: 1.) the payment must be in cash vs. property, 2.) the written instrument does not designate the payment as *not* alimony, 3.) if the parties are separated under a decree of divorce or separate maintenance, they are *not* members of the *same* household when the payment is made, 4.) there is no liability to make payment after the death of the recipient spouse, and 5.) the payment is not treated as child support.

Cash payments to a third party under the divorce or separation instrument are considered alimony if they otherwise qualify. Some common instances where these payments could occur are: rent, mortgage payments, medical and dental costs, utility bills, education and income taxes. The payments are treated as though received by the spouse and then paid to the third party.

Payments Not Alimony

However, just because a payment is labeled “alimony” in a separation or divorce agreement doesn’t make it alimony for tax purposes. A payment may be treated as spousal support under Ohio law, but may not qualify as alimony for federal tax purposes. Payments that are not deductible as alimony include: noncash property settlements, child support, payments for use of the property, and payments to keep up the payer’s property. If the separation instrument doesn’t require the alimony payment, then the payment would be a voluntary payment and may be considered a gift by the IRS.

Yet another option, the spouses may characterize otherwise deductible alimony payments as nondeductible by the payer spouse and nontaxable to the payee spouse by including a provision in their divorce or separation instrument. This is often done when the alimony paying spouse doesn’t need the deduction. A reduction in payments should be negotiated, since it would greatly increase the payee spouse’s after-tax income by excluding the payments from income. More information can be found in IRS Publication 504. If you have any questions regarding the taxability or deductibility of alimony; please feel free to give me a call to discuss the situation in more detail.

Executive Compensation & Business Owner’s Compensation

By Susan A. Moussi, CPA, CFP®, CDFIA, CVA

The following is from a presentation on compensation of executives and business owners. I won’t be able to reproduce the entire presentation, but here is a summary of some of the areas discussed.

There are three Ohio Revised Code sections that refer to “earnings” or “income” with regards to child support and spousal support. The two sections under child support (Sec. 3119.01 (C)(7) & Sec. 3119.01 (C)(10)) define “gross income” as “...earned or unearned income...” as well as “...whether or **not** the income is taxable...”. “Personal earnings” is defined as “... compensation paid or payable...” and “... **however denominated**, and includes wages, salary, commissions, bonuses, draws against commissions, profit sharing, vacation pay, **or any other compensation.**” Sec. 3105.18(C)(1) under spousal support refers to “relative earnings abilities” and “income of the parties, from all sources” and “standards of living”

Today’s executive, in addition to a regular salary and cash bonuses, may be receiving in-kind compensation in the form of stock options, restricted shares, additional retirement plan benefits, additional life insurance coverage, the use of company cars and airplanes, club membership, etc. According to an article at Bloomberg.com, “Bonus Pay Changes Put Massive Wrench in Wall Street Divorces”, more and more companies are using equity-based compensation. This has created cash flow and budget problems due to the delay and uncertainty in realizing these bonuses. Yet much wealth may be attributable to the good fortune of being awarded shares that increase in value. How will future awards be handled? Are they to be considered “*income to the parties, from all sources*” and as contributing to the “*standard of living*”? When future bonuses are equity-based, how can we (or should we) account for them in child and spousal support analyses?

The IRS has several Private Letter Rulings (PLR) and Revenue Rulings (Rev. Rul.) that address the issue of dividing stock options and deferred compensation (PLR 200519011, Rev. Rul. 2002-22, and Rev. Rul. 2004-60). They address several issues, such as: which party reports the taxable event at the time of exercise or distribution; whether or not a taxable event occurs at the time of transfer; and what taxes apply and which party gets credit. These IRS rulings have limited use since they only apply to options and nonqualified deferred compensation benefits that have vested and that are no longer subject to substantial contingencies.

Fringe benefits are yet another form of compensation. Some are taxable and others are nontaxable. As of now, the health insurance is nontaxable, but starting in 2011 the employer will need to report on the W-2 the value of the benefit even though it remains nontaxable. Personal use of company cars should be reported to the employee on the W-2. Do you know how the amount was calculated or what it represents? Lately, more employers are offering high-deductible medical plans to their employees and are making contributions to the employee’s Health Savings Account. This is a nontaxable fringe benefit.

Self-employed individuals, partners, and shareholder-employees may be compensated in many of the same ways noted above. Typically, a self-employed individual will take draws from the business. There is no W-2 reporting, only a Schedule C which reports gross income into the business and various expenses that relate to the business. This may not necessarily equal cash flow to the family. Partners and shareholder-employees have various forms of compensation.

Partners may have a guaranteed payment (no withholding) in addition to draws and employee-shareholders may have W-2 earnings and distributions. Whether draws or distributions, the amount reported would also include any amounts paid on the partners/shareholders behalf to a third-party, such as health insurance premiums, retirement funding, etc. In addition, both may take loans from the business, which would not be reflected on the K-1, or may build-up cash in the business and delay draws until a later time without any reasonable business-purpose to do so.

When trying to understand the nature of one's earnings and compensation, a W-2 or K-1 will not always offer enough information. Employment contracts, financial statements, summary plan descriptions for retirement plans, and option grant agreements are examples of some of the items that will be needed to understand how the employee or business owner is compensated.

Double Dipping – You Can't Have Your Cake and Eat it Too!

By Heather Deskins, CPA/ABV/CFF, CFE, CVA
Managing Member of P.D. Eye Forensics, LLC

Double dipping occurs in a divorce when a spouse receives property in an equitable distribution and then it is also counted as a source of income for calculating spousal support. This often occurs when a pension, or other source of retirement, is counted as marital property and a source of income for support.

Another area where this becomes an issue is when the parties own a closely-held business. The business owner, let's say it's the husband, takes a salary of \$500,000. In determining the fair market value of the business, the valuation expert may adjust the owners' compensation to a normalized compensation level of \$300,000. The value of the business is then based on the owner receiving \$300,000 in compensation (all else being equal, this adjustment would increase the value of the business).

Even though the husband actually takes a salary of \$500,000, the income used for support should be the adjusted compensation of \$300,000, otherwise the difference of \$200,000 is counted twice; once in the value of the business and again in the income for support. It's important to be consistent and review the salary of the business owner, in order to avoid the double-dip.

An Ohio Appeals Court case *Heller v. Heller*, 2008 WL 2588064, reversed a trial court because it double dipped. The trial court awarded the husband his brokerage firm (H & S) with a value of around \$700,000. The wife was awarded other marital assets to achieve an equal division. The husband's normalized salary was \$300,000 and his average annual income from the business was over \$600,000. The trial court awarded spousal support of \$8,000 per month, plus 20 percent of what the husband received over \$300,000.

The Court of Appeals held that the trial court abused its discretion "in drawing twice from the same well – defendant's share of H & S's future profits – in dividing marital assets and ordering spousal support... Trial courts may treat a spouse's future business profits as a marital asset subject to division, or as a stream of income for spousal support purposes, but not both." The compensation over and above the \$300,000 was determined in the value of the business and should not be considered for support.

There are many other situations where double dipping can come into play. If you have questions about a particular situation or would like to discuss this topic further, please give me a call.

MEMBER ANNOUNCEMENTS

The new CDP officers and Board Members for 2010 -2011 are: President, **S. SCOTT HAYNES**, President-Elect, Vacant, Secretary, **NANCY SPONSELLER**, Treasurer, **HEATHER DESKINS**, Past-President, **SUSAN MOUSSI**, and Board Members, **BOBBIE CORLEY O'KEEFE**, **ELLEN KAY DOUGLAS**, **ELAINE BUCK** and **RON PETROFF**.

S. SCOTT HAYNES, J.D. is pleased to announce that he has been selected as one of Ohio's Super Lawyers in Family Law for 2011. Scott is also an OSBA Board Certified Specialist in Family Law.