

THE COLLABORATOR

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

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President's Report

by Susan A. Moussi, CPA, CFP®, CDFA, CVA

WEBSITE FEATURED MEMBERS SECTION ACTIVATED

If you haven't had a chance to visit the website lately, the Featured Members page is now in place. Congratulations to those members who have earned the ten points necessary to be listed. Those members will be included on the Featured Members page for one year and will remain on the page as long as ten points are earned by the end of each year. For those who did not have ten points by December 31st, you have an opportunity to be listed, beginning in July. This would be for those members who earn ten points between July 1, 2009 and June 30th. This will remain your reporting period. Please make sure you have the most current version of the Point System (Revised November 23, 2009) since this reflects Board-approved changes, including the addition of mediation training and other training, on a case-by-case basis, which enhances knowledge or skills applicable to Collaborative Law. Our collaborative community can only become stronger when the members commit to being active in the organization and commit to improving their collaborative skills.

MONTHLY LUNCHEONS PROVIDE VALUABLE EDUCATION

The monthly luncheon programs, held the fourth Thursday of the month, are opportunities to improve one's skills. Topics such as spousal support, which was presented by Judge Gill, the current real estate market and mortgage application process, and the use of the team approach when faced with difficult clients are just a few of the topics that have been covered. Please mark your calendar for the Thursday luncheons. If you have ideas and suggestions for future luncheon topics, please contact a Board member.

WATCH FOR LOCAL BASIC AND ADVANCED CFL TRAINING EVENTS

A two-day training workshop is in the planning and development stages for later this year. Training in both basic and advanced collaborative skills is necessary and is not always easily found. The IACP website (www.collaborativepractice.com) is a good resource when looking for training and the CDP, Inc. Board will post any training information that comes to our attention.

FUTURE MARKETING HELP FROM IACP

Public awareness of Collaborative Law, as an alternative, is still on my to-do list. I recently heard members of a California collaborative community speak of their advertising efforts in airports and in movie theatres. In a recent phone teleconference with IACP Board President Sherri Slovin, I asked about marketing efforts by the national organization. They have various marketing materials available for purchase. According to IACP research into this matter, they have found that local marketing is more effective than national marketing. She also mentioned that the initial conversation with a prospective client was very important in getting Collaborative cases and that the IACP has plans to make webinars, on this subject and others, available to the members. We will keep you informed on any materials that become available to assist you with your initial conversation regarding the use of the Collaborative process.

Editor's Corner: It Takes a Village to Raise a Quality Newsletter

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

This is the second issue of THE COLLABORATOR, and, speaking as Editor, I want to thank Tom Nagel, Nancy Sponseller, Susan Moussi and Heather Deskens for voluntarily providing interesting and educational material to help fill

space, and to serve as examples of the type of team spirit that hopefully more CDP members will emulate in order to continue to sustain and to build a quality publication that will benefit all members.

So far, the newsletter staff consists of one person - the Editor. But, I am not planning on selecting all topics and writing all of the articles. So, there will be plenty of opportunity for any interested member to volunteer to write one or more articles as a "Guest Reporter" in each issue. At the present time, we are doing only two issues each year - in March and September - and, as you can see in this issue, the length of an article may be as short or as long as the author chooses to make it. In other words, the author has complete control over the length and complexity of the article.

In order to provide a variety of opportunities for Guest Reporters, I would like to create some regular features that address the mutual interests of all of our interdisciplinary professionals. For example, every future issue could contain designated column space for topics like: "Divorce Taxation Alerts," "Business Valuations," "Parenting Plan Pointers," "Investment Insights," "Personality Disorder Problems," "Difficult Conversations," "Real Estate Realities," "Pension Plan Pointers," "Collaborative Process Best Practices," and "Professional Portraits" (feature one or two members in each issue). This would provide a variety of topics to attract the interest of all members.

How many members will rise to the challenge? BONUS: ANY MEMBER WHO WRITES AN ARTICLE CAN CLAIM ONE FULL POINT TOWARD THE ANNUAL TOTAL OF 10 NEEDED TO QUALIFY FOR "FEATURED MEMBER" STATUS ON THE CDP WEBSITE.

MEMBER ANNOUNCEMENTS

JEFFREY FISH, J.D. is pleased to announce that he has been selected as one of Ohio's "Super Lawyers in Family Law" for 2010. Jeff also is an OSBA Certified Specialist in Family Relations Law, and a CDP Past-President.

HEATHER DESKINS, CPA, and Managing Member of P.D. Eye Forensics, LLC, has been awarded the Accredited in Business Valuation (ABV) credential by the American Institute of Certified Public Accountants (AICPA). The ABV credential, established in 1996 by the AICPA, recognizes CPAs with extensive professional experience in business valuation. The ABV credential is granted exclusively to CPAs who elect to demonstrate their business expertise and experience by earning the credential. Since inception, 2,810 CPAs have earned the ABV credential.

Ms. Deskins met the requirements to earn the credential, including holding a valid CPA certificate, providing evidence of substantial experience and continuing education in business valuation, and passing a written exam covering the business valuation common body of knowledge, including the areas of professional and regulatory standards, valuation methods and report writing. Heather also is the current CDP Treasurer.

"The demand for business valuation services by CPAs has increased tremendously in recent years especially from owners of family businesses who are concerned with estate and gift tax issues, succession planning, divorce settlements, or who need guidance on selling their business or buying a new one," says Ron Seigneur, CPA/ABV, Chair of the AICPA's ABV Credential Committee. "CPAs have had a long history of providing advice to clients on a variety of financial and business matters. The ABV credential recognizes the growing importance of this service and the CPA's expertise in delivering it."

CPAs who have earned the ABV credential must recertify every three years. To do so, they must submit documentation demonstrating substantial involvement in the business valuation discipline and complete a prescribed amount of related continuing professional education during this three-year period.

Ohio Child Support Commission Report Recommends New Legislation

At its May 7, 2010, meeting in Dayton the OSBA Family Law Committee will receive a report on new legislation recommended by the Ohio Child Support Commission. Major changes are being proposed; but, your Editor cannot attend this meeting this year. Is there any CDP member who is ready to earn a point toward Featured Member status by attending this meeting, and writing an article about the report for the September issue of THE COLLABORATOR? Please identify yourself to the Editor at rwistner@att.net.

Top Mistakes to Avoid in Collaborative Four-Way Meetings

By Tom H. Nagel, J.D. (Judicium Procurator Recuperatio)

During March 2010 a collaborative discussion broke out on the international Yahoo group mediated by Carl Michael Rossi, on the topic of how to have successful collaborative family law four way meetings. The question proposed was: "What are the top ten mistakes we make in collaborative four way meetings?" I tried to save all the responses and boil them down for you. Somehow the "top ten" grew to "top seventeen". It must be March madness.

I have listed the top contenders roughly in order of importance as I see them. So with apologies to Stu Webb and David Letterman, here are the Top Seventeen Mistakes in Four Way Meetings, as suggested by your collaborative peers all over North America.

1) Failing to confirm to all attendees via email the exact time and location of the meeting, a week before, and a day before, and the morning of.....and failing to provide working phone number for people to call when they are running late or suddenly ill.

2) Failing to set another date for the next meeting is a big problem. This might happen if someone does not have their calendar with them, in which case we have sometimes set the next date and then had the person confirm that the date is OK later. If the date is not OK, we wind up making lots of phone calls or sending tons of email to confirm a new date.

3) When an agreement has been reached failing to set a schedule to get a draft done. It is a mistake if another date is not set. Setting a date for the drafting deadline, and then the signing of the documents at that session is important.

4) During meetings using terms such as "fair", "reasonable", "equitable", or other favorable descriptions in connection with *our own* suggestions. And using terms like "unfair", "unreasonable", "inequitable", or other unfavorable descriptors in connection with the suggestions of *others*.

5) Scheduling meeting in a room and at a table that are uncomfortable (too hot, too crowded, too noisy) and that do not permit a variety of seating options.

6) Allowing meeting to go forward without a clear written agenda that has been agreed upon beforehand by counsel and reviewed beforehand with clients.

7) Allowing meeting to continue if anyone attempts to violate the agreed agenda (if that happens, the agenda immediately changes to process discussion so as to return to agenda, or else adjourns temporarily or till another day so lawyers can recalibrate about process agreements)

8) Allowing a distressed client to "ventilate" at the table (i.e. unload on spouse or professionals) because of a mistaken belief that it is healthy catharsis , thereby rendering room and process unsafe and disrespectful.

9) Failing to take the time and make the effort to gel as a collaborative team and create and maintain a safe container throughout the process.

10) Permitting the meeting to last for more than two hours. We have a saying that nothing good happens after two hours. We want to end on a high note without anybody saying or doing something out of anger, exhaustion or frustration. We've also learned that the two hour rule applies to preparatory meetings that have been scheduled immediately before the joint meeting. That doesn't work well, with the client who met with his/her attorney right before hand coming into the room already a little fried without the usual patience and perspective.

11) Failing to have the parties review and sign a memorandum of agreement that contains any agreements reached at the meeting is a mistake. I have been involved in full team collaborative cases where one of the parties' "mis-remembers" what he/she has agreed to and is rather defensive and insulted when the team and/or his/her spouse wonders why she/he didn't live up to the agreement.

12) Failing to circulate notes from team meetings after the meeting and in particular meetings in which all members were not present. There's nothing like getting to a four way meeting to find out that the agenda is redundant because the parents and coaches worked out a parenting plan, but didn't tell the attorneys. Or that the "affair" was

discussed at length with the financial person – and one party's attorney didn't even know there was an affair (or hurt feelings around that subject).

13) Not having pre-and post- debriefing meetings between counsel and team so that the team is on the same page about hot button issues, developments, concerns about team behavior, etc.

14) Contradicting counterpart counsel's interpretation of the law or likely outcome instead of acknowledging the merit of the other attorney's thoughts and offering your opinion and/or experience as another possible interpretation or outcome. (I have found it very effective, when a client asks me a law question during a four way meeting, to suggest that we let the other counsel summarize the law on that point. When both counsel are saying the same thing, it often helps the clients get in line.)

15) It is a mistake when brainstorming to criticize an idea or begin evaluating options as they are suggested.

16) It is a mistake to not make time for pre-meeting conferences and post-meeting debriefs, so you are on the same page with counterpart counsel during the four-way.

17) And let's not forget the importance of providing delicious food and beverages! If no one grabs a cookie during the entire four way meeting, this is a danger sign!

Next time: the top ten mistakes outside four way meetings!

Is Collaborative Divorce a Suitable Process for Me? (10 tips to help you decide)

(Editor's Note: This list was created by Nancy J. Foster, J.D., and is used as a hand out for potential clients and their spouses at the Northern California Mediation Center, San Rafael, CA. Reprinted with attribution.)

1.) I know that I will be better served in the long run if my spouse and children are also well served. I want my children to be in the center rather than in the middle.

2.) I want to speak and act from my best self, even though sometimes my words and actions seem to come from my worst self.

3.) I want my lawyer to be a wise counselor and an engaged moral agent rather than a hired gun and an alter ego.

4.) I am willing to be in the same room with my spouse and to speak for myself and my own legitimate self-interest with the assistance of one or more collaborative professionals.

5.) I am open to solutions that will respect both my and my spouse's needs and interests.

6.) I want to make decisions affecting the future of myself and my family from a place of calm, considered wisdom, rather than from a place of anger, humiliation and fear - even though I may be experiencing those hard feelings, now, and during the process of the divorce.

7.) If it were possible, I would prefer a deeper resolution rather than a shallow peace.

8.) I know that at times things may feel hard and uncomfortable, but I am willing to be with that discomfort and to persevere through the process.

9.) I want to act ethically for myself, for my spouse and for the sake of my children.

10.) After the divorce is completed, I want to be able to look back and feel good about the outcome and how I handled myself during the process.

CDP LUNCHEON MAY 27 AT TONY'S ITALIAN RESTAURANT - SPEAKER: JERRY OLSHESKI, PH.D. - USING VOCATIONAL EVALUATIONS IN COLLABORATIVE DIVORCE CASES

Protocols Are Coming To CDP!

By Nancy Sponseller, J.D.

This title may appear presumptuous on my part, but the fact of the matter is that Protocols, in some form, must be adopted by our collaborative practice group. Just as other collaborative practice groups have found the adoption of Protocols to be important, if not critical, our practice group must also reach the same conclusion if we want to advance our level of competency to practice collaborative law.

Your first awareness of Collaborative Practice Protocols may have been either when you received the email attachments of “sample” protocols recently sent to you by Susan Moussi or at the March CDP luncheon when we heard collaborative practitioners from San Diego, Toronto and Boston address this topic. I admit that as a collaborative practitioner, I had not been aware of the wide-spread development of Protocols in other practice groups, nor had I given the development of Protocols for our group any real consideration. Yet, I also felt we were missing something or some things.

What are Protocols? Most simply stated, Protocols are a “how to manual.” I have also heard some references to Protocols as being the steps that “choreograph” the collaborative case, from the beginning to the end of the case, much as one would think of a choreographed dance. I suggest that we might also think of Protocols as a refined set of procedures that are somewhat (note, I said somewhat) analogous to the Rules of Civil Procedure for litigation. Without the Rules of Civil Procedure in place, what rules would one follow in litigation from filing through to the end of the case? There would be none, and everyone would “do their own thing” which obviously is totally unacceptable.

Some free thinkers might respond that in the collaborative context, we are by definition “doing our own thing” and we are encouraging our clients who choose collaborative to also do whatever they want. First, this is not true. Moreover, where this has been proffered as a reason why Protocols are not necessary (in other geographical areas of the country, e.g., Massachusetts), this viewpoint has been rejected in the face of the reality that clients need order and clarity of order, as they go through what necessarily is the most chaotic time of their life as they divorce. Protocols provide order and clarity of order. Clients need to hear from all collaborative professionals consistent statements of what the collaborative process entails and the order of the process. And, the professionals who are involved in the process need to have the assurance that all of the other professionals committed to collaborative process also have a common understanding and set of expectations that, frankly, go well beyond the initial, basic belief that collaborative is “the better way to divorce” to borrow a phrase from Stu Webb and others. Yes, collaborative is a better way to divorce, but there is a much better way to practice collaborative law, and that better way involves a minimum standards of competency, continuing collaborative practice-related education, and, yes, Protocols—Protocols that will give much needed definition to the collaborative process and much needed guidance on the tough issues that we face in collaborative cases.

Fortunately, a few years ago, at the urging and work of several of our members (Elaine Buck and Bobbie O’Keefe, to name two members who led the charge), we now have as CDP members neutral financial experts as well as mental health professionals enabling us to offer clients the “Full Team Model” collaborative approach. While the full team model may not be needed in every case, particularly in simpler cases where there are no minor children and /or the finances are simple, the full team model approach enables us to deliver a far superior product—i.e., the end result to the clients where the full team model approach is needed. Indeed, I would argue, based on my actual collaborative practice experience, that there are a number of cases that we should only accept as a collaborative case *if and only if* we indeed utilize the full professional comprehensive team approach. Protocols are even more important when we employ a full team model, among other things, to avoid the “herding cats” syndrome.

As illustrated by the samples of Protocols we have provided to our members, Protocols address and provide clear standards of expectations, as well as well as positive, creative suggestions and guidelines. The following is a very brief list of just a few of the topics that can be covered by Protocols, to provide instruction and guidance:

- How to start the process

- How to assist the client to enroll his/her spouse in the process
- What to do if the other party chooses an attorney who is not collaboratively trained
- How to explain the process to the parties
- How is the team assembled—how to determine what professionals are needed
- What are the confidentiality rules for each professional
- Tips for making the meetings productive and efficient
- What is covered in initial meetings AND subsequent meetings
- How to use the collaborative process structure at time of impasse
- What professionals are needed for which meetings
- Identifying the issues in the case
- Who does the minutes for the meetings and why should minutes be kept
- How to prepare your client for the meetings
- How does each professional obtain informed consent from the parties
- What should be included in the Collaborative Law Participation Agreement

and the list goes on and on and on...a wealth of information and ideas!!

My question to our members is whether we are ready as a practice group to raise the bar for our collaborative practice, so that we can deliver to our clients who choose collaborative a truly superior legal process and a truly superior end legal product. If we are to raise the bar, and my opinion is that we must raise the bar, then we need to embrace Protocols that are well thought out, well written and consistently implemented by all who are members of CDP.

IACP Membership Offers Valuable Benefits and Resources

By **Susan A. Moussi, CPA, CFP®, CDFA, CVA**

I have been a member of IACP (International Academy of Collaborative Professionals) since 2005. In addition to my membership with IACP, I belong to seven other professional organizations, all requiring an annual fee or dues, some of which are three times more expensive than the annual IACP fee of \$135. It gets expensive to join all these organizations. I sometimes question whether I am really getting value for the money. Here are some reasons I feel there is value to having an IACP membership.

Once you are in member you will have access to books, videos, and articles written by other collaborative professionals about the collaborative law practice. You will find stories written by clients who tell about their experience with collaborative law. These stories may provide you with some talking points for initial meetings or telephone calls with a prospective client. Not sure what to do for the first meeting? Many groups have shared their agendas, protocols, follow-up letters with prospective clients, and other useful materials on the IACP website.

You also benefit from being listed as a member on the IACP website. You can list your credentials and post a message regarding your thoughts on Collaborative Law. This is one more place where a client can find you because the IACP website provides a Collaborative Professionals search tab. A prospective client types in a name, state, or zip code and will be able to find a collaborative professional in their area.

As a member, you will receive invitations to participate in phone bridges. This is usually an hour or hour-and-a-half telephone conference and includes a question-and-answer period. Past phone bridges have been about practice groups and marketing. If you're not able to attend one of these phone bridges, you can listen to a recording of prior phone bridges when it's convenient (but only if you are a member!).

You will also find information about upcoming training events and can obtain colorful marketing materials to hand out to prospective clients. Have an ethical question? Again, resources are available on the website to research your question. You are also connected to other collaborative professionals, outside of your immediate community, who understand this practice area and who are, most often, very generous with their time when you have questions.

In addition, on the IACP website, members can access forms, practice standards and protocols already drafted and in operation in other Collaborative Practice groups in the U.S.A. and several foreign countries. A wonderful resource to avoid reinventing the wheel!