

THE Collaborative Review

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IACP INTERNATIONAL ACADEMY OF
COLLABORATIVE PROFESSIONALS

Creating our Path in a World of Change

I IACP LISTENS, ARTICULATES ITS
IDENTITY AND CREATES AN
INNOVATIVE MEMBERSHIP PLAN
By Shireen B. Meistrich, LCSW

II IACP CLIENT EXPERIENCE STUDY
By Linda K. Wray, JD and Barbara E. Kelly, PhD

III THE IACP ETHICAL STANDARDS:
EVOLUTION IN PROGRESS
By Diane S. Diel, JD

IV PLANTING THE SEED OF LEADERSHIP
By Kevin R. Scudder, JD

V WOLF IN SHEEP'S CLOTHING
By Lana M. Stern, Ph.D.

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Table of Contents

LETTER FROM THE PRESIDENT	3
<i>By Suzan Barrie Aiken, JD</i>	
LETTER FROM THE EDITOR	5
<i>By Nancy J. Cameron, QC, LLB</i>	
I IACP LISTENS, ARTICULATES ITS IDENTITY AND CREATES AN INNOVATIVE MEMBERSHIP PLAN <i>By Shireen B. Meistrich, LCSW</i>	7
II IACP CLIENT EXPERIENCE STUDY	10
<i>By Linda K. Wray, JD and Barbara E. Kelly, PhD</i>	
III THE IACP ETHICAL STANDARDS:	12
EVOLUTION IN PROGRESS <i>By Diane S. Diel, JD</i>	
IV PLANTING THE SEED OF LEADERSHIP	16
<i>By Kevin R. Scudder, JD</i>	
V WOLF IN SHEEP'S CLOTHING	19
<i>By Lana M. Stern, PhD</i>	



Letter from the President

By Suzan Barrie Aiken, JD

Reflecting on this time of great change around the globe, former secretary-general of the United Nations Kofi Annan recently wrote, “Whatever the outcome, these moments are an opportunity to ask clear, honest questions of ourselves and our world.”

In many ways, the Collaborative community is uniquely well-suited to make the most of this opportunity. We are, after all, a community comprised of professionals who have devoted their careers to supporting others through periods of great transition. As a community, we believe that transitions – both big and small – are best approached from a place of curiosity, reflection, and creativity.

In this spirit, IACP is deeply engaged in asking how we can best serve our community, our clients, and our movement in this changing world. With that goal in mind, our organization has embarked upon its own process of transformation. After many years of serving the Collaborative Practice community more generally, we have centered our focus on the resolution of family disputes. In order to better reflect IACP’s evolving aims, we are in the process of revisiting and reshaping our vision and our mission. As our current strategic plan comes to its natural end, we are also beginning the process of designing our next strategic plan, which will take IACP and the Collaborative movement into its next phase of growth and development. With the hope of better supporting the continued expansion of Collaborative Practice in diverse communities around the globe, we are launching our new membership plan, which will allow all skilled professionals who share our goals to join our community, even if they have limited financial resources. With the introduction of Global Partners, we formally lay the foundation for IACP as the connector of Collaborative Practice organizations worldwide with a keen focus on creating and building alliances. For our movement to succeed, it is crucial that we give Collaborative Practice the opportunity to flourish in all communities and that Collaborative Practice organizations from around the world have meaningful opportunities to engage with and learn from each other. I believe that the new membership plan is a huge step in that direction.

Debbie Hill, who came on as our CEO last year, has decided to move on. I want to express my profound appreciation to our staff, who have worked diligently, professionally managing the extra work necessary in the office. I am grateful to our wise and supportive membership as we move through this next transition. As one member thoughtfully noted, “We at IACP have accepted a tall order; we’ve taken on a serious responsibility. We’ve said that we believe it can be done better – not perfectly, but better. That starts with us. This happens in our family, just like everyone else’s, and here is how love and respect and transformation can look.” We are fortunate to have our members support us at this time. Former IACP President Lynda Robbins has agreed to step in as our interim manager. I consider it an incredible honor and privilege to serve as your President as our community seizes this opportunity to ask the clear and honest questions that will allow IACP to step gracefully into its next chapter.

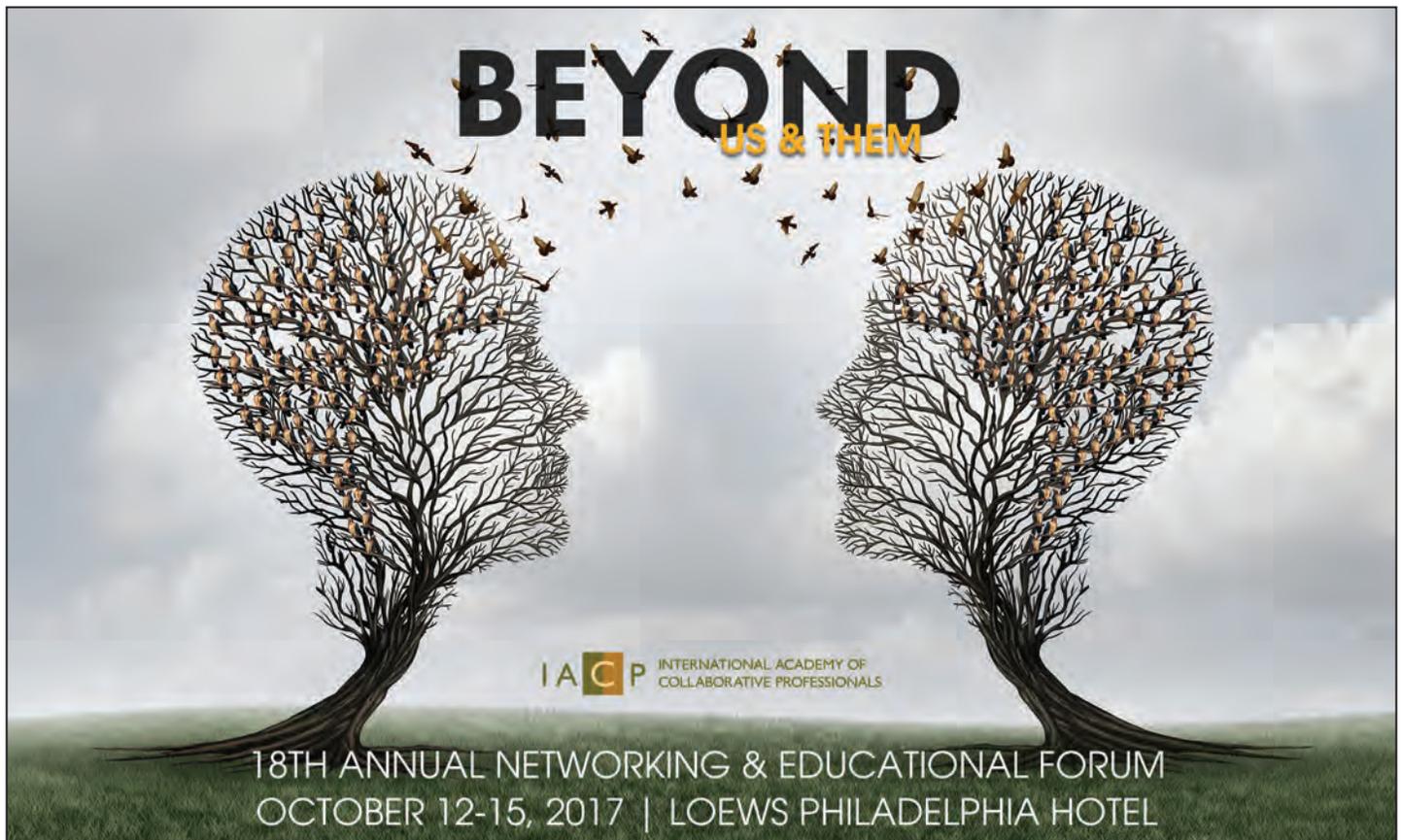
Reflecting on our movement, I am filled with gratitude and optimism. Collaborative Practice has transformed the way that I approach my work, but it has also transformed my understanding of the world we live in; it has shown us all what is possible when people in conflict commit to resolving their differences, rather than identifying with them.

Letter from the President (continued)

When people talk about the changing face of conflict around the world, they usually have in mind the complex socio-political conflicts that are so ever-present in today's headlines. Simultaneously, deep in our communities, the face of conflict is changing in a very different way. In the homes of every family and in the offices of every professional that Collaborative Practice has touched, the face of conflict has transformed. Where we used to defend and attack, we have learned instead to listen and inquire. Where there was once contempt and denigration, instead there is empathy and respect. Where the aftermath of disagreement was once characterized by hostility and resentment, it is now characterized by peace and dignity. We are, in a very real way, transforming the way that conflict is addressed worldwide, from the ground up. In the face of great challenges, our work has never been more important.

As each of you seizes this moment of opportunity in your own way, I encourage you to bring your Collaborative skills to bear, not only in your professional lives, but also with your own families and communities. Together, let us ask clear, honest questions of ourselves and the world, so that the path ahead may be lit by the answers we find.

Suzan Barrie Aiken, JD





Letter from the Editor

By Nancy J. Cameron, QC, LLB

As we move into spring, the Collaborative Review is emerging from its own hibernation. It has been over a year since the last issue was published, and much has changed within IACP during that time. The last issues of the Review were shepherded either by a guest editor or by our former CEO, Talia Katz. I am honoured to step into the role of editor of the Collaborative Review, and look forward to once again regularizing our publication.

As the IACP president, Suzan Barrie Aiken, says in her Letter from the President, these are times of great change, both globally and within IACP. This issue has a number of articles that highlight some of the recent changes within IACP.

We are a large and diverse community. A community built of individual members, small collaborative groups that have built and sustained particular identities, and larger collaborative organizations. We share common values and beliefs: respect, the power of transparency in negotiations, the magic of curiosity to enhance our understanding and bridge differences. We also have significant differences: we work within different jurisdictional constraints, we operate as part of different justice systems, and these differing systems each maintain their own status quo. How we negotiate the constraints of the status quo within our respective jurisdictions also differs.

And yet, we come together as a worldwide collaborative community, and as such have our own identity. The task of articulating this identity was a necessary and complex step in determining the direction of IACP. In her article, “IACP Listens, Articulates Its Identity and Creates an Innovative Membership Plan,” Shireen Meistrich explains both the process of exploring and articulating our communal identity, as well as the change this has introduced with the restructuring of the IACP membership plan.

Just as it is important for IACP to listen to members, it is also important to listen to Collaborative clients. In 2014, the IACP undertook a new study, the client experience survey. Now that the data from this survey has been gathered, we are ready to explore the information contained in that survey. Linda Wray and Barbara Kelly, in the article, “IACP Client Experience Study,” explain both the process behind the survey and the areas of inquiry undertaken. This article is an introduction to the survey. A subsequent issue of the Collaborative Review will look at the survey in detail and mine the survey information for details that will help us determine how we can improve both our practice and the experience of our clients.

As each of us knows, as we work in our Collaborative communities around the world, building and sustaining Collaborative Practice requires leadership. What does leadership look like in our diverse Collaborative communities? How do we recognize it, nourish it, sustain, and celebrate it? If leadership begins with a seed, how do the variations in the ground it is planted in contribute to its growth? It has been two and a half years since the graduation of the IACP Leadership Academy class, and Kevin Scudder, one of the graduates, has begun a series of columns that will appear in upcoming editions of the *Collaborative Review*. The first of these articles, “Planting the Seed of Leadership” appears in this issue. Upcoming issues will highlight other graduates of the Leadership Academy, and highlight what they have created in their own communities and beyond. With this series of articles, we hope this may help us explore the questions, “How do we measure the success, or failure, of a program? What does the short term teach us? What does the long term teach us?” As I personally wrestle with these questions, I ponder the question we all mull so often in our work, “How do we nourish a safe place to forge meaningful, inter-personal bonds?” Is a spark

Letter from the Editor (continued)

enough, and what conditions are necessary to create a flame? How do these bonds help sustain and increase our capacity as leaders? I look forward to this series, and the collage that will help us better understand these questions, while at the same time celebrating the leaders in our midst.

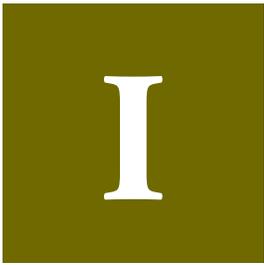
Perhaps one of the most difficult, time-consuming, and yes, thankless tasks of the countless volunteers that sustain IACP is the drafting of and revisions to the IACP Ethical Standards. In her article, “The IACP Ethical Standards: Evolution in Progress,” Diane Diel explores the history of the IACP Ethical Standards, explains why it is time for a re-write, and also gives a preview of the current draft. As she notes, in her delightfully understated manner, “some sections of the new draft may provoke more discussion than others”. This article frames an opportunity for each of us to think not only about how our ethical standards guide us, but also about the necessary tensions that emerge between standards and creativity in practice. How do we create strong ethical guidelines and, at the same time not discourage the flexibility inherent in a bespoke service that meets the needs of our clients? I encourage practice groups to set aside a meeting for reviewing the draft standards when they are circulated to the membership, to have thoughtful discussions about some of the suggested changes, and to share your comments with the IACP Ethics Rewrite Task Force.

As this issue goes to press, I think about the iterative way that we work, and also the iterative way growth and change happen. Although the phrase “paradigm shift” is often used in introductory Collaborative trainings, I have always thought this notion short-changed professionals in recognizing the deep and difficult work that we do. This work has never been as simple as a shift, and to think of it as such can, in itself, be a polarizing concept. How many times have we heard someone say, “He hasn’t really made the paradigm shift,” or, “she just doesn’t understand the paradigm shift”? As we commit to Collaborative Practice and all that it encompasses, we find the skills and concepts we learn affect all our significant relationships. We find ourselves striving to listen more carefully, to bring curiosity to the conflicts we are involved in and to the conflicts we watch from a distance. As IACP moves into the next iteration of its institutional life, our ability to truly embrace the change that collaborative problem solving demands from us personally in part depends upon our individual ability to do the hard work we demand of our clients. Lana Stern, in her article, “Wolf in Sheep’s Clothing” explicates some of the more difficult, personal, challenges we all encounter in this work. It is the task of each of us to manage the inherent tension between our inner wolf, which serves us well in many situations, and the collaborative skills and self-monitoring required of us as Collaborative professionals. I urge practice groups to use Lana’s article as a basis to create structured practice group learning sessions, or as a structure to help debrief difficult Collaborative case interactions.

I look forward to hearing from you, the members of IACP, about what you would like to see in the *Collaborative Review* as we move forward. If you are interested in writing an article, or have an article you would like to have considered for publication, please feel free to contact me at nancy@nancy-cameron.com. This is our organization, its growth and strength is built on meeting our needs, on resonating within our Collaborative communities, and on bringing us together to share what we learn and push us to expand the use of Collaborative processes in difficult times.

Nancy J. Cameron, QC, LLB

A handwritten signature in black ink that reads "Nancy J. Cameron". The signature is written in a cursive, flowing style.



IACP Listens, Articulates Its Identity and Creates an Innovative Membership Plan

By Shireen B. Meistrich, LCSW

In 2015, IACP was due to update its strategic plan after successfully completing the plan created in 2011. Under the leadership of our former CEO, Talia Katz, and the 2015 IACP President, Linda Wray, the Board of Directors made a bold decision. It decided to take a year to pause, listen and reflect. Before undertaking the next strategic plan and setting the course for the upcoming few years, the Board decided it was vital to seek input from its members. Without the input and dedication of our members, how could the future be charted? The Board undertook an innovative and courageous journey that included a significant outreach initiative to seek critical feedback from our members. The Board created a set of questions which included both open-ended questions to help us understand our members' needs and interests, and closed questions to gather specific information. Our varied professional members were called upon to participate, including new members, old members, and lapsed members. The IACP wanted a full global perspective and some groups were targeted to participate, other groups were welcomed by an open invitation to participate. Each Board member took the responsibility for conducting and facilitating several of these calls. We were given one mandate: Listen! Do not solve problems. Simply be open, curious, present, attentive, and listen in a non-defensive manner. How often do we ask our clients and our team members to conduct ourselves in this way?

It was a fascinating experience and met mostly with a positive response from the membership who expressed gratitude for the opportunity to speak up and be heard. This experience also led the Board to create an annual "Listening Room" at the Forum to allow for continued connection between organizational leadership and members at large.

What did we discover? The IACP membership includes dedicated, passionate, outspoken mavericks that are moved every day to create constructive problem solving results through respectful negotiations. As we listened to our members a deeper question emerged: how do we identify ourselves as an organization?

Our first inquiry led us to question and then discern whether we were a traditional professional organization or a cause organization. After listening to our members, it became clear that we are a cause organization. We are comprised of compassionate and passionate professionals who are deeply dedicated to helping people and divorcing families transition with dignity and respect. We are professionals who want to contribute to peaceful resolutions. We are problem solvers who feel good about working within a collaborative process.

As we gathered information that began to help us articulate our identity, a more difficult question emerged: who do we serve and why? Our members said their work is connected to divorce and healthy family outcomes. Members often said a primary motivating factor in the work they do is creating positive outcomes that serve the needs of families and children. However, we were also trying to serve the civil Collaborative practitioners within our organization. The tension between family and civil needs has been part of an ongoing conversation for years. The IACP has struggled to effectively meet the needs of our civil practitioners. The civil community has often said that their needs were not being served because of the lack of civil programming at the Forum. Despite outreach and a call to the civil community to bring forth training materials and programming, IACP was unable to successfully facilitate this in a way that was satisfying to our civil practitioners. The organizational message started to feel inauthentic, as the IACP was clearly

serving divorce and family needs first and struggling to meet the needs of the civil community. The civil community shared that they had difficulty with the disqualification clause in the work they were doing. The professionals described how the Collaborative training, skills, and respectful negotiations were incredibly helpful to civil cases, but the disqualification clause was harder to utilize. Since disqualification is an essential and defining element of the Collaborative Process, the civil community's challenges with the disqualification clause further complicated matters.

A significant and overwhelming concern for the Board was to articulate an organizational identity, while not alienating and disconnecting the organization from the larger consensual dispute resolution community. This was not an easy organizational task, yet we hold differing spaces and perspectives every day in our Collaborative cases, and we endeavored to do that during our listening year. After a year of deep listening to our members, we identified ourselves as an organization that meets family needs through negotiating outcomes and creating resolution for families. We heard from our members that family cases include divorce and family matters such as prenuptial and postnuptial agreements, probate, trusts and estates, guardianship, and conservatorships, paternity, adoption and family business disputes.

Although our members made it clear that we are primarily family focused, we want the civil community to still feel connected and confident in the Collaborative Process, in our skill-building programming, and in the rich learning that we share. We want civil professionals to continue to learn with us and use the collaborative skills and process in a way that satisfies their clientele and needs. We believe in the Collaborative Process and its benefits. We also believe that our programming, trainers, and education have a larger benefit that can enrich consensual dispute resolution in all areas. We want to expand our base and allow for a multitude of professionals to learn as we continue to generously share. The more people we serve, the more we assist in better problem solving and better outcomes, no matter what our area of focus may be. We want to continue

to welcome the civil community to our collaborative learning table. We want to continue to support the work of the IACP in a way that feels more honest and more authentic. Together, the family and the civil community can make a difference, as we are united in our desire for successful outcomes for our clients.

Listening to our members and articulating our identity was not an easy task. It was labor intensive. It was arduous, exciting and invigorating, and helped us achieve needed connection with our membership. This was important and critical work to enable us to commence the next phase of creating our organizational structure. The IACP Board has now taken steps to create a new membership plan to serve our members and our community. We are creating two categories of membership: sustaining membership and classic membership. The sustaining membership is a paid membership that continues to help the IACP grow and develop to serve the professionals working with families, while giving its members value added and membership benefits. The classic membership is a no-charge membership. This is IACP's courageous approach to share the Collaborative Process and its unique contribution to peace-building with as many people as possible. Both our membership options help the IACP maintain our vision to transform the global culture of family conflict resolution.

An exciting new addition to our organizational structure is the Global Partner initiative. This initiative will be an important way to create alliances between Collaborative Practice organizations and will serve as the global connector among groups and institutions that support the IACP's mission and vision. Global Partner alliances are critical for the continued growth and sustainability of the IACP.

Currently, individual members should pay their dues, under the existing structure, as they become due. Once the new membership plan is launched, the individual membership status will be honored through the date of renewal. After that date, each member will be able to renew under the new membership plan and dues structure.

We hope you will remain committed and proud to be a part of the IACP as we continue our important work into the future. Watch for dates when the new membership plan, including the Global Partner Initiative, will be available.

Shireen B. Meistrich, LCSW

Shireen is a Collaborative divorce coach with the Collaborative Divorce Association of North Jersey. She has been a member of the Practice Group since 2007 serving as the past President and past Vice-President. Shireen is a founding member of the New Jersey State Council for Collaborative Practice Groups and has served in this capacity since 2008. Currently, she serves on the International Academy of Collaborative Professionals (IACP) Board of Directors as the Past President.

IACP Speakers Bureau



In order to help support and strengthen the growth of local Collaborative communities, IACP is making available speakers, **free of charge**, to come visit with you in your own communities. Local Practice Groups can select from a wide range of topics - we'll match the best speaker to your Practice Group's needs and will split the travel expenses with you. We hope you will take advantage of this wonderful and affordable opportunity to learn from and connect with some of the best thought leaders in our community!

We look forward to the opportunity to visit with you!

To request an IACP Speaker for your group, please visit www.collaborativepractice.com to complete the Speakers Bureau Request Form and return it via e-mail to: info@collaborativepractice.com or via post to **4201 N. 24th Street, Suite 240, Phoenix, AZ 85016.**



IACP Client Experience Study

By Linda K. Wray, JD and Barbara E. Kelly, PhD

As a professional community, we value the opportunity to learn from objective information. Although there is a significant amount of statistical information about the prevalence and demographics of those who divorce, there is much less information about how clients perceive the experience they had in different divorce processes. As a community built on serving the needs of divorcing couples, IACP has committed resources to gathering information to help us better understand client's needs and experiences. The first study, which concluded in 2010, focused on gathering information about Collaborative cases from both Collaborative professionals and from clients who used the Collaborative Process.

Building on the important role of objective data to inform our work as Collaborative professionals, the IACP has now concluded the data gathering process of its second large scale study. This second project, called the Client Experience Study, was begun in 2014. The focus of this study is to understand the experience of divorcing individuals within the context of the divorce process option used.

For the purposes of the study, the IACP Research Committee defined four separate divorce process options: Traditional Court Process; Collaborative Practice; Settlement Process other than Collaborative Practice; and Do-It-Yourself Divorce. The major objectives identified for the Client Experience Study were to:

- Obtain demographic profile information of individuals in each of the four processes;
- Understand process characteristics of each of the four identified process options; and

- Learn about the experience of divorcing individuals, in particular their satisfaction level across a variety of factors, in each of the four identified processes.

To achieve these objectives, the Research committee created a Divorce Experience Survey which asked questions about respondent demographics, facts about the divorce process chosen, and respondent perceptions about their divorce. Topics of questions within each category included the following:

Demographics

- Age of respondents;
- Length of marriage;
- Income; and
- Size of marital estate;

Divorce Process

- Reason for choosing primary process used;
- Professionals used by spouses;
- Length of divorce;
- Use of formal discovery;
- Difficulty level of divorce;
- Use of court post-divorce to have one or more issues decided by a judge;
- Use of a dispute resolution professional, parenting coordinator, financial professional or other neutral post-divorce;
- Whether the respondent would choose the same process again; and
- Whether the respondent would recommend the process chosen to a friend.

Client Experience

- Satisfaction generally with the divorce process chosen, and with a variety of aspects of the chosen divorce process, including:
 - o Level of privacy;
 - o Respectfulness;
 - o Disclosure of information;
 - o Opportunity to express self;
 - o Attention to needs/interests; and
 - o Efficiency of process.
- Satisfaction generally with the resolution of financial issues, and with the resolution of a variety of aspects of financial matters, including:
 - o Allocation of debt;
 - o Child support;
 - o Spousal maintenance; and
 - o Division of retirement, investment and bank accounts.
- Satisfaction generally with resolution of parenting issues, and with the resolution of a variety of aspects of parenting matters, including:
 - o Allocation of decision making rights and responsibilities; and
 - o Parenting time arrangement.
- Satisfaction generally with relationships among family post-divorce and with a variety of aspects of post-divorce family relationships, including:
 - o Respondent's relationship with children; and
 - o Respondent's relationship with former spouse.
- Satisfaction generally with respondent's sense of well-being post-divorce, and with a variety of aspects of respondent's sense of well-being post-divorce, including:
 - o Emotional well-being;
 - o Ability to co-parent;
 - o Ability to make financial decisions; and
 - o Ability to work and earn an income.

- Satisfaction with divorce professionals.
- Satisfaction with fees paid.

To administer the Survey IACP engaged Donald Winspear, President and CEO of Crescent Research, a national market research firm. Mr. Winspear obtained responders from national data banks available to Crescent Research. While several responders who used the Collaborative Process were obtained in this fashion, the sample of Collaborative responders was obtained predominantly through submission of client names to Crescent Research by IACP Collaborative practitioners. In order to be eligible to participate in the Survey, responders must have completed a divorce in the United States within the 36 months preceding their response to the Survey, been between the ages of 25-70, and agreed to internet data collection.

The Survey was developed by the IACP Research Committee in 2014 and the first six months of 2015, and administered between July 1, 2015 and September 8, 2015. A total of 1,186 divorced individuals responded to and fully completed the Survey. Of these respondents, 1001 were identified through Crescent Research's data banks and 186 were identified via submission of names to Crescent Research by IACP members.

Once Survey administration closed, responses were tabulated by Crescent Research and provided to the IACP Research committee for analysis. The IACP Research Committee is currently submerged in the process of analyzing the data and looking forward to reporting their findings in an upcoming edition of the Collaborative Review.

Linda K. Wray, JD

Linda has been a Collaborative attorney since 2000. She was a Director on the IACP Board of Directors from 2011 to 2015, serving as President 2014-2015. She has chaired or co-chaired the IACP

(continued on page 27)



The IACP Ethical Standards: Evolution in Progress

By Diane S. Diel, JD

It has been thirteen years since the first IACP Standards committee worked on developing IACP Standards. The IACP Ethical Standards are now undergoing a comprehensive reorganization and re-write. When the Standards were first published, they represented “a remarkable degree of consensus across the community of Collaborative practitioners.”ⁱ The development projectⁱⁱ took over two years from concept to approval. Shortly after the publication of the initial Standards, the IACP Standards Committee undertook a restatement, organizing the Standards around the most common elements of Professional Codes of Ethics such as “competence”, “conflicts of interest” and “confidentiality.” These revisions were intended to highlight the similarities between the IACP Ethical Standards and the ethical codes of all the professionals involved in Collaborative Practice. In January, 2008, the IACP Board considered and approved the restated Ethical Standards. This version is available today on the IACP website at: https://www.collaborativepractice.com/media/108025/IACP_Standards__Ethics__Sep_2015_.pdf.

IACP is not a regulatory body or a disciplinary body, but holds as its first organizational priority the responsibility for “establishing and upholding the essential elements, ethical and practice standards of Collaborative Practice.” The IACP Ethical Standards are designed to provide assurance to the public that they are engaged in a principled and high quality process.ⁱⁱⁱ The Standards serve as a model for practice groups and provide Collaborative professionals with structure and guidance in their practice. The Standards are not intended to substitute for practice protocols and are not an outline of “best practices.”

Why a Re-Write?

The ethical standards of any profession are not static. Ethical standards are intended to standardize the work of the profession, protect clients and, in the case of lawyers, define the lawyer’s interaction with the judicial system and with other lawyers. For mental health professionals, ethical standards are designed for the welfare and protection of the individuals and groups with whom psychologists work, and for financial professionals, ethical standards are primarily designed to ensure a high quality of service to the public. As the law, knowledge, society and the environment change, ethical standards evolve to reflect those changes. Dictionary definitions of the word “ethics” generally include the word “morals” but the rules ordering professional interaction are not based on right or wrong conduct. Rather, as the Merriam-Webster second tier definition states, “ethics” are “the principles of conduct governing an individual or a group.”^{iv} An ethical code is never final because professional experience changes and evolves and existing guidance becomes dated. Changes in the law and ethical standards of the legal profession have altered the climate for Collaborative Practice since 2005.

In the early days of Collaborative Practice, some lawyers questioned whether their codes of professional ethics, which many believed charged them to be zealous advocates, could be reconciled with interest based settlement advocacy. Unbundled legal services, also called limited scope representation, was just emerging in 2000. Interdisciplinary practice was suspect, as in 2000, the American Bar Association shuttered its Multidisciplinary Practice Committee with a resounding rejection of the notion that a lawyer could ethically practice law as a co-owner of a professional services firm with members of any other profession. Most people in

court proceedings were represented by lawyers and only a few futurists predicted that clients would turn away from lawyers because they would view lawyers as obstacles to conciliatory outcomes and that alternative dispute resolution processes would expand by exponents.^v

The climate for ethical Collaborative Practice seemed murky in 2007 when in February, the Ethics Committee of the Colorado State Bar rendered an opinion stating that Collaborative Practice raised conflicts of interest which could not be waived. Law societies published stories about the Colorado opinion using headlines declaring ‘Collaborative Practice is Unethical’ in spite of the fact that many other states’ Ethics Committees previously found Collaborative Practice to be ethical.

The adoption of the IACP Ethical Standards in this climate helped establish the credibility of the Collaborative Process. In August, 2007, the American Bar Association issued its formal opinion, *ABA Comm. On Ethics and Prof’l Responsibility*, Formal Op. 07-447 (2007) approving the use of Collaborative Practice, thus quieting arguments that Collaborative Practice was unethical and squarely identifying Collaborative Practice as an ethically appropriate form of limited scope representation. The Uniform Law Commission approved the Uniform Collaborative Law Rules/Act (“UCLR/A”) in 2009^{vi}. Even though the American Bar Association refused to give its approval to the UCLR/A, the UCLR/A was approved in several states very quickly. The winter edition of the *Collaborative Review* in 2010 celebrated the emergence of Collaborative Practice with an article by Robert Cochran, a Pepperdine law professor/ethicist who described Collaborative Practice as an ethical and “important new process for the resolution of legal disputes” with its own set of Ethical Standards.^{vii}

These changes for the better brought a need for review of the Ethical Standards. Certain substantive provisions of the UCLR/A are inconsistent with the Ethical Standards. A 2013-4 Task Force of IACP^{viii} reviewed these inconsistencies and proposed revisions to certain sections, but this work highlighted the need for a thorough restatement of the Standards. Rather than make piecemeal changes to the Standards, in the fall of 2014 the Board of IACP created an Ethics Rewrite Task

Force and charged it to:

Perform a thorough review of the Ethical Standards for Collaborative Practitioners and recommend revisions to the Board that:

- (a) uphold the Definition of Collaborative Practice,*
- (b) incorporate the amendments previously approved by the Board from the UCLA Task Force,*
- (c) promote clarity and consistency in application in light of the development of CP in family law and other legal practice areas worldwide,*
- (d) help guide Collaborative practitioners to better serve their clients, and*
- (e) enhance public trust and confidence in CP.^{ix}*

Since 2014, The Ethics Rewrite Task Force^x has prepared three drafts of revised Ethical Standards and presented each draft to the IACP Board. A working draft of the revised Ethical Standards has been vetted by the IACP Standards Committee and was presented to a Forum Workshop audience at the Forum in October, 2016. The draft was presented to over 150 members of IACP by Webinar in December 2016. The working draft will be presented for comment to senior practitioners and to focus groups of practitioners. The entire membership of IACP will be invited to comment. The input of these groups will be considered prior to circulation of a final draft and adoption by the board of IACP.

Preview

The Task Force has created a new organizational framework for the Ethical Standards that generally follows the order in which a case unfolds. The first section will retain the name “General Standards Applicable to All Collaborative Professionals” and includes a definition section. This first section will establish standards related to competency, conflicts and confidentiality. The second section is entitled “Commencing the Collaborative Process,” the third is “The Collaborative Process” and the final section is “Conclusion of the Collaborative Process.” The draft speaks directly to the conduct of the professionals rather than to the content of the Participation Agreement. The task force has attempted to incorporate only true ethical minima, and not “best practices” or protocols.

Some sections of the new draft may provoke more discussion than others. As an example, the question of what work a Collaborative professional may do after a Collaborative case ends is not clearly answered by the current Standards. The revised draft proposes to end the lack of clarity on the involvement of the Collaborative professionals after the process terminates by creating bright line distinctions between cases that end with a “Resolution” – a defined term, and those that terminate because the process ends without an agreement, or proceeds to litigation. A new section prohibits a Collaborative professional from working on a matter after a termination in any way other than providing referrals, consulting about reinstating the Collaborative Process or providing information about dispute resolution options. Thus, a Collaborative practitioner may not consult with the litigation team for the client and may not entertain settlement discussions with a professional who is not a signer of a Participation Agreement. The current draft (as of January 15, 2017) of new Section 4.5 reads:

4.5 Professional Work after Termination of Process.

- A. After Termination, a Collaborative professional will not provide any service to the client(s) that is either (a) adverse to any other client in the terminated Collaborative matter, or (b) related to the Collaborative matter.
- B. After Termination, a Collaborative professional may provide the professional’s client(s) with referrals.
- C. After Termination, a Collaborative professional may consult with a client about reinstating or resuming the Collaborative process, and about dispute resolution process options that may be available.

New Content

The draft includes two completely new sections. The duty to negotiate in good faith is one of the strongest underlying principles of Collaborative Practice, but the current Ethical Standards makes only a single reference to good faith negotiations, providing in Section 9.2 that if a client fails to negotiate in good faith, the professional may withdraw or terminate the process. The draft articulates the basic requirements of good faith negotiations in the Collaborative Process as:

3.3 Good Faith Negotiation.

- A. The professionals must act in good faith in all negotiations and in the Collaborative Process, and must advise the clients that the Collaborative Process requires good faith negotiation.
- B. Good faith negotiation requires that:
 - (1) Each client and professional takes a thoughtful and constructive approach on all unresolved questions in the interest of reaching agreements.
 - (2) Each client and professional complies with the Participation Agreement and any other formal and informal agreements made in the course of the Collaborative Process.
 - (3) No client or professional takes advantage of inconsistencies, misunderstandings, inaccurate assertions of fact, law or expert opinion, miscalculations, or omissions.
 - (4) No client or professional threatens to undertake a Proceeding to coerce a particular outcome on an issue to be resolved by the Collaborative Process.

The second new section is Section 3.4 "Professional Teamwork." The obligations of the professional under this section include effective communication with all team members and a responsibility to manage the process effectively. Section 3.4(C) asks the professional to examine the effect of the professional's own conduct on the process. The current draft of this section reads:

- 3.4 Professional Teamwork. Each Collaborative professional engaged in a matter has the responsibility, individually and with the other Collaborative professionals, to manage the Collaborative Process effectively, efficiently, and in a manner that advances the clients’ common goal of reaching Resolution. This responsibility includes:
 - A. The obligation to inform the other professionals of facts or circumstances that are likely to impair or improve (1) the effective functioning of the Collaborative Process for the clients, (2) the likelihood of reaching Resolution, and (3) the ability of the professionals to work effectively together.

- B. The obligation to monitor and coordinate the efforts of professional team members to avoid unnecessary delay and duplication of effort.
- C. The obligation to examine the impact of the professional's own conduct upon the functioning of the professional team and on the Collaborative Process. Each Collaborative professional must act in a manner that advances the clients' goal of reaching Resolution.

The existing and the proposed new Standards establish the overarching principle that each professional must maintain his or her professional license and comply with the Ethical Standards of his or her own profession. In the case of a conflict between the Standards of the professional and the IACP Standards, the professional's standards control.

The question for discussion is how to resolve situations where the ethical codes of the professional differ. For example, in the United States, when requested, lawyers in most states must provide a copy of the file to the client at the end of representation. In some jurisdictions, 'file' is defined very broadly. Also in the United States, psychologists are ethically obligated to consider whether releasing information from a file would harm the client. The question that arises is what happens when a psychologist has divulged something potentially harmful to the client to the lawyer, and the lawyer may provide that information to the client. There are workable answers to this ethical dilemma which could be the subject of a separate article. Teamwork requires identification of these differences and open problem solving discussions.

Conclusion

A rewrite of the IACP Ethical Standards is due. When adopted, they will represent a remarkable degree of consensus among Collaborative professionals. Work on the next "rewrite" will begin shortly thereafter.

Notes

ⁱ Letter published on IACP Website accompanying the publication of the Ethical Standards. The letter is on file with the author.

ⁱⁱ The Standards Committee included Nancy Cameron, Cathy Daigle, Nancy Ross, Pauline Tesler, and credit was extended to

Bob Bordett, Mark Hill, Janis Pritchard, George Richardson, Chip Rose, Peggy Thompson and Julie McFarlane and Bernie Mayer for contributions to the Standards.

ⁱⁱⁱ www.collaborativepractice.com/aboutiacp

^{iv} <https://www.merriam-webster.com/dictionary/ethic>

^v 74 Wisconsin Lawyer 3, "Setting a Course for the Future," by Ann Massie Nelson, available at <http://www.wisbar.org/newspublications/wisconsinlawyer/pages/article.aspx?volume=74&issue=3&articleid=21776>

^{vi} The UCLR/A is designed for adoption by the legislatures and or judicial rule-making bodies of state governments within the United States. Today, fifteen states in the United States have a version of the UCLR/A.

^{vii} Robert F. Cochran, Jr., *Legal Ethics and Collaborative Practice Ethics*, 38 Hofstra L. Rev. 537 (2009), as published in the IACP Collaborative Review, located at: https://www.collaborativepractice.com/media/6586/vol11_WINTER2010_11.pdf

^{viii} The members of the Task Force were Linda Wray, JD, David Fink, JD, Harry Tindall, JD, Maury White, JD and Diane Diel, JD.

^{ix} Resolution passed by IACP Board in January, 2014.

^x The members of the Task Force are J. Mark Weiss, JD, David Fink, JD and Diane Diel, JD.

Diane S. Diel, JD

Diane is a Collaborative lawyer in Milwaukee, Wisconsin. She is a member of the Collaborative Family Law Council of Wisconsin (CFLCW) and is a Past President of CFLCW (2002), the International Academy of Collaborative Professionals (2011), and Past President of the State Bar of Wisconsin (2008-2009.) She is a current member of the IACP Ethics Re-Write Task Force, and the IACP Ethics and Standards Committee. Diane is grateful for the scholarship, conscientiousness and camaraderie of Mark Weiss, JD and David Fink, JD, her colleagues on the Ethics Re-Write Task Force.



Planting the Seed of Leadership

By Kevin R. Scudder, JD

“I now embrace the theory of prophecy which holds that prophetic voices of great clarity, and with a quality of insight equal to that of any age, are speaking cogently all of the time.”

Robert Greenleaf, *The Servant as Leader*

For the first 48 years of my life I never consciously wanted or sought to be a leader. There were enough leaders in my family, both maternal and paternal. I just wanted to be left alone to live my life; to be independent. Life just seemed that it would be easier that way.

During these years I had glimpses and sensations of leadership, and even fascination with the concept of leadership as I observed and experienced life. At Hampshire College, where I completed my undergraduate education, I wrote a paper on the different forms of leadership on an Ultimate Frisbee team. At the time I did not have the vocabulary to describe the different leadership qualities at play, but I gained the awareness that a successful Ultimate team depended on a high quality of leadership on different levels exhibited not by just one person, but several.

Still I resisted, though I now accepted my leadership style of “leading by example”. Though I understood my style, I was still not answerable to anyone but myself.

I was happy leading by example until 2008, when I took my basic Collaborative training here in Seattle, WA. It was then that the epiphany vault was opened for me, and I stepped onto the path of collaboration and of leadership. With the introduction to Collaborative Practice I was wedded to my passion, an inner passion that passed from my subconscious to complete consciousness. This caused shockwaves in my life, while at the same time brought me an inner calm. I did not know what form it would

take, but I committed then to embrace being a leader within the Collaborative community.

In 2013 the IACP announced its inaugural Leadership Academy. In order to be accepted to the Leadership Academy people interested in attending the Academy went through a rigorous application process. The application process had two-parts: the first requiring the applicant to fill out the application and explain why they were qualified and wanted to be part of the Academy; the second being a requirement that the applicant have the backing of a practice group in their area.

The Leadership Academy was intended to be a collaborative effort requiring both individual and community commitment and backing. This backing had to be both financial and professional.

On the financial side, one-half of the \$1,000.00 application fee (the cost of the Academy was highly subsidized by IACP) had to be paid by the applicant and the other half had to come from a local sponsoring practice group. This requirement created an expectation that what the individual learned in the Academy would be brought back and shared with the sponsoring practice group and the local Collaborative community at large.

For those of us applying to the Leadership Academy this meant making presentations to local practice groups, explaining the Academy and the return on investment being offered. My experience, and the experience of other applicants, was that practice groups were very enthusiastic to sponsor us because the Academy was addressing two of the most pressing needs of our Collaborative community: leadership succession and the development of quality leaders.

When the IACP announced the opening of the application process for the Leadership Academy I did not hesitate to apply. In April and May 2013 I approached two local practice groups, making a presentation about the Leadership Academy opportunity and asking for practice group sponsorship. With these practice groups I made a deal: if they sponsored me I would bring back to the practice groups and our local Collaborative community, not only the knowledge I learned in the Academy, but a personal commitment to years of leadership.

My application was supported by two of my practice groups, Cascadia Collaborative Divorce and Cypress Collaborative Divorce, each group paying one-half of the practice group portion of the application fee.

The syllabus for the Leadership Academy described its purpose as follows:

The purpose of the IACP Leadership Academy is to develop the leadership skills of participants in order to assist them in making the most effective contributions to the growth and development of the Collaborative movement, both locally and internationally.

Our goals are to nurture effective leadership which will support thriving Practice Groups, to build relationships among leaders within the Collaborative community and to ensure the enduring vitality of the Collaborative movement.

It is expected that upon completion of the course, Leadership Academy graduates will return to their Practice Groups better prepared to serve, lead and inspire their communities.

The intention of this article and others to follow in subsequent issues, is to explore the effectiveness of the inaugural Leadership Academy and to see if it accomplished what was intended. This will be done by shining a spotlight on a handful of the individuals and communities that invested in the Leadership Academy.

The inaugural class of the Academy was an international class of twenty-four practitioners from around the world. The instructors were Anne Lucas of Seattle, WA and Nancy Cameron of Vancouver, BC.

Our studies lasted a year, starting before we arrived at the San Antonio Forum in October, 2013. Rather than taking part in the two-day Pre-Forum, the members and instructors met together for those two days to start and delve into our work. Our common intention was that by the end of our time together the graduates of the Academy would be able to:

- practice reflective learning skills in order to increase their own self-awareness as leaders;
- utilize specific tools to work with group conflict;
- be intentional and mindful in forming and developing groups and organizations; and
- define their own leadership style as well as developing leaders in their groups.

This initial two-day training was followed up by a mid-year two-day in-person retreat and concluded at the 2014 Forum in Vancouver, BC.

Our work in the Academy was intensive. The outline of the course required us to journal throughout the year, to help us process the learning we were doing. In addition to journaling, we studied different styles of conflict, the 8 Dimensions of Leadership, principles of governance, the leading of volunteers, and group decision making.

Other learning tools included breaking up into eight teams and doing the Marshmallow Challenge. If you haven't done this with your practice group, try it.

https://www.ted.com/talks/tom_wujec_build_a_tower

We also studied the principles of Servant Leadership, Reflective Leadership, and Neuroleadership. Our reading list was extensive and eclectic.

The most challenging of the learning activities were the two group projects. These provided the learning laboratory that supported the opportunity to apply what we learned. This then allowed us to integrate that learning so that what we experienced would evolve into a permanent state that we would carry with us, back into our communities.

The first project involved groups of six. In this project, delivered at the mid-year retreat, our objective was to

work together to put together a 30-minute presentation on either organizational culture or organizational conflict. Much to everyone's surprise at the mid-year retreat, this project turned out not to be so much about the substance of our work, but more about the group process (observations, emotions, experiences and mechanics) that we experienced in putting the report together.

The second project was a self-selected group project that required us to work with each other. We were to use what we learned about group process and decision-making in the first group project, and come up with presentations that were presented at the 2014 Vancouver, BC Forum as "Paying it Forward: Lessons Learned from the Leadership Academy, Parts 1 and 2".

As the Vancouver Forum came to a close the members of the Leadership Academy assembled on stage and graduated. We received our diplomas and stepped off that stage with a year's worth of work and education behind us and a lifetime of leadership opportunity before us.

It has now been over three years since the Leadership Academy's first class, instructors and students, started their work. It is time to explore whether the mission of the Academy has been realized and how the international Collaborative community has been impacted by the graduates taking the knowledge they gained back to their communities. In future issues we will be highlighting Academy graduates in different communities and, through interviews with the graduates and the practice groups that sponsored them, explore how the mission of the Leadership Academy has been realized.

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Kevin is a Collaborative attorney based in Seattle, WA. He is a graduate of the International Academy of Collaborative Professionals' inaugural Leadership Academy, trainer, regular contributor to the Collaborative literary community [<http://www.be.fulfilled.org/> and <http://theworldofcollaborativepractice.com/>], and currently the President of Washington State's

state-wide collaborative organization, the Collaborative Professionals of Washington. Most recently Kevin is a contributing author to the new book coming out from the ABA co-edited by Adam Cordover and Forrest "Woody" Mosten on developing a satisfying and profitable peacemaking practice. Kevin can be reached at kevin@scudderlaw.net or through his website at <http://www.ballardcollaborativelaw.com/>.

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Wolf in Sheep's Clothing

Why It's Difficult for Collaborative Professionals to Make That "Paradigm Shift" and What To Do If They Don't!

By Lana M. Stern, PhD

The Collaborative Process requires a significant change in how its participants conduct themselves during a divorce negotiation. This new perspective, known in the field as the “paradigm shift,” is the goal of the professionals and our hope for the divorcing couple. This shift involves a fundamental change in how the spouses and the professionals think, feel, act, and speak during the process. It is a difficult transition to master and must ultimately become internalized as part of each individual’s professional persona. It is understandably challenging for the professionals, who have successfully used specific skills in their various practices before becoming collaborative, to change their habits and to now engage in a very different way of interacting. Becoming a Collaborative professional requires a willingness to master new skills and an openness to use alternative methods of resolving conflict.

Professionals who train in the Collaborative Process are sincere and concerned about how divorce can be made less contentious. But once a commitment to practice collaboratively has been made, there are many instances when the professionals fall back into old habits. What accounts for these relapses? What makes staying Collaborative so challenging? Why do well-meaning collaboratively-trained professionals suffer from these slips? And, most importantly, what can the Collaborative team do when these slips occur?

Cognitive Dissonance and Regression

In a recent Collaborative case where I served as the mental health professional (MHP), the husband’s attorney continued to add provisions to the marital settlement agreement that his client did not request. He transmitted these additional stipulations by a formal letter to the other attorney, without discussing them or their impact with the clients and team. The second attorney now felt

obligated to notify his client about these changes. At this moment, a potential domino effect could occur if the second attorney forwarded these changes to his client and continued the paradigm slip. I was not copied on these communications and was only alerted when the second attorney, and later the couple, called to discuss the matter. This was an important pivotal moment, as we all could have continued on the same course. The result would have been distressing to the couple, who had already agreed to legal terms and was moving into an emotional closure. Instead, a professional team meeting was called and we all discussed the potential changes and decided to put them on the agenda of the next Collaborative meeting and have the couple discuss what changes, if any, would be incorporated into the settlement agreement.

What happened? The husband’s attorney had regressed into litigation mode and the other attorney might have followed suit. One reason why professionals may not be able to remain Collaborative is the internal struggle that results when several conflicting values arise at a critical moment. This occurrence, known as cognitive dissonance, causes anxiety and discomfort when a person is confronted with contradictory standards – the person often copes by reverting to older, more familiar ways of operating. Paradigm slips are contagious and all members of the team can get caught up in the interaction.

For attorneys, the internal conflict is precipitated by the differing values of the adversarial litigator and the Collaborative advisor. Many years of practice have ingrained in most attorneys a focused objective of obtaining the maximum financial outcome for their clients. In the Collaborative Process, the clients are an active part of the process and can voice what is most important to them in determining their own futures; this may conflict with the attorney’s traditional concept of winning, or of obtaining the best outcome for the client.

There are other issues for the attorneys. They normally operate under the structure of the law and within the procedural rules of court. In the Collaborative Process, the team relies on honesty and transparency from both the clients and the other attorney to produce important documents and information.

This reliance can be especially difficult for the attorney when there is a power imbalance between the clients in terms of their knowledge of business and finances. What happens if the clients are not interested in producing documents that the legal process usually requires? What are the attorneys' responsibilities then? Are they subject to potential malpractice claims if evidence is not obtained and preserved?

For the MHP, changes are complex as well. Psychotherapy is typically a confidential relationship with an individual, couple, or family in a series of private meetings. But the Collaborative Process is a transparent interaction involving the sharing of information with the entire team. Additionally, MHPs in a one coach model can be tasked with the unfamiliar role of facilitating the team dynamics, which can consist of leading team meetings, conducting debriefings, and monitoring the behavior of all participants. These changes and responsibilities may be beyond the comfort zone of many MHPs. In a two coach model, it may be challenging to support one's client while at the same time building a positive and supportive relationship with the other party.

In a traditional litigation case, the financial professional (the "FP") is retained as an expert witness for one side to support a particular interpretation of financial issues. He is involved in the discovery process, determining the parties' income and lifestyle, calculating tax effects

of asset allocation, and devising various schedules of spousal and child support. In contrast, in the Collaborative Process, the FP plays a neutral role, performing many of the same analyses, but doing so with the participation of both clients. The scope of disclosure is determined by the clients. This can create significant discomfort for the FPs, who may now be limited in advising clients about various outcomes. What if more documents are needed for a comprehensive review but the clients are unwilling to authorize this? Are FPs held to the same standard of due diligence as they are in litigation? Do the same liability issues apply to the FPs as they do to the attorneys?

The Collaborative Process utilizes new rules, concepts, ethical guidelines and expectations for all involved. This environment can generate internal tension for the professionals and their clients. When this tension is sustained over time, especially under duress in emotionally charged interactions, it is easy for the professional and the couple to "slip" into more familiar patterns of behavior. It is often at these times that Collaborative professionals will be charged with not acting collaboratively.

Examples of this behavior in a Collaborative case may include:

- Direct attorney/attorney negotiations without involving the entire team;
- Disempowerment of the clients by excluding them from the decision-making process;
- Repartee of positional posturing by withholding information for strategic gain;
- Use or misuse of emails that inflame the process;
- Use of a formal letter sent to certify an issue;
- Lack of inclusion of the MHP and FP in all aspects of the process;



- Employing the courtroom strategy, “Don’t ask for permission, ask for forgiveness”;
- The MHP Facilitator lapsing into therapeutic interventions instead of facilitating the process;
- Loss of neutrality by a neutral coach or MHP;
- Loss of neutrality by the FP;
- The FP preparing equitable distribution charts and alimony schedules without client and team input;
- The FP addressing only the moneyed or powerful spouse;
- Elimination of pre/post professional team meetings;
- Minimizing the importance of employing the debrief; and
- Failing to use a full team model when it is necessary.

Transference/Counter-Transference

Another threat to the maintenance of the Collaborative mindset comes from two closely related psychological processes called “transference” and “counter-transference.” Transference is an unconscious projection of one’s own feelings, conflicts, or attitudes (positive or negative) onto a current person, situation, or circumstance. Counter-transference is the reverse, when the professional projects their feelings, conflicts, or attitudes back towards the other party. These projections can account for instant bonding with or hostility toward a new person or situation. When they occur, inaccurate interpretations and expectations of the situation and process can develop.

Examples of transference in the Collaborative paradigm include:

- Strong emotional feelings (positive or negative) by the client towards an attorney or other member of the team;
- Unrealistic expectations about the depth of the relationship with the attorney or another professional team member;
- Dependency on an attorney, MHP, or FP as decision-maker, protector, or savior; and
- Transfer of anger or blame from a client to the spouse’s attorney or another member of the professional team.

Examples of counter-transference in the team framework include:

- Over-identification by the attorney or another professional team member with the client and/or the client’s issues;
- Strong feelings by the attorney or another professional team member (positive or negative) towards the client;
- Strong feelings by the attorney or another team member (positive or negative) towards another member of the team;
- Disclosure of too much personal information to the client;
- Special favors or treatment not usually given to a client or other team member;
- Feeling the need to protect, rationalize, or excuse the behavior of a client or another team member; and
- Taking sides with the client against the other spouse and their attorney.

The transference/counter-transference dynamic and one’s immediate personal problems can sometimes intrude into professional work. In one of my more demanding Collaborative cases, the attorney representing the husband coincidentally was also going through his own, difficult divorce. He identified with the husband’s trauma and with the husband’s description of the wife’s behavior. It soon became obvious that he was confusing the dynamics of the Collaborative divorce with his own personal situation. In the team meeting, his body language and verbal comments directed toward the wife were disproportionately hostile; he attributed qualities and actions to her that had no basis in fact. He insinuated that she was a “liar” and that she was “not fit” to parent the children without any evidence to support his claim. Transference/counter-transference within the professional team prevented collaboration for the clients.

Battle Scars

Yet another impediment to remaining Collaborative could well be titled battle scars. Attorney-attorney dynamics (and attorney-FP dynamics) can obviously have a significant impact over years of prior relationship on the working environment of the process. Many

attorneys and FPs involved in a given Collaborative case have litigated against each other previously and/or know each other's reputations. There may be positive or negative histories, alliances, or trust issues between old adversaries. Memories of previous courtroom skirmishes can seriously affect the interaction between the attorneys, creating transference/counter-transference issues. Similarly, experiences with the given FP in prior cases can generate the same dynamics.

Examples include:

- Withholding of necessary documents or information to the team based on a recent case, reputation, or other personal interactions;
- Formal correspondence between the attorneys to memorialize an issue;
- Refusal to negotiate without a global settlement package;
- Use of old language such as opposing counsel; and
- Refusal to participate in planned pre/post team meeting or debriefs.

Consider a scenario in which two prominent attorneys in town are old rivals. They are well-matched and have a long history of competitive, high-profile litigious trials over many years. They know each other's strategies, tricks, and moves. Both have now become collaboratively-trained and have demonstrated their commitment and attended many advanced Collaborative workshops. When paired with other Collaborative attorneys, they adhere to the principals of true collaboration and cooperation. However, when paired with each other in a Collaborative case, they may "talk the talk" of collaboration but they definitely do not "walk the walk." They are like two old generals meeting and preparing for battle – collaboration becomes the casualty.

Professionals must learn to self-regulate their emotional reactions when paired in a Collaborative divorce with an old adversary. One power of the team is that it can perform checks and balances to keep old rivals apprised of any non-collaborative behavior. The debriefing component of the Collaborative Process serves as an effective mechanism for this input.

Parallel Process

Parallel process emerges when the professionals unintentionally recreate and act out the conflict of their clients. This dynamic is mostly observed in highly litigated cases, but it can appear in the Collaborative setting, as well. The attorneys identify with their clients and act out the hostile, emotional struggles between them. Often the personal wishes of the couple are overlooked as the battling attorneys became preoccupied with their personal agenda.

It was a very difficult gray divorce case involving a forty-year marriage, infidelities, lack of trust between the spouses, and a lifestyle that had depleted their savings. This scenario unconsciously triggered one of the attorneys. The wife was enraged at the indulgences and poor money management by her husband during the marriage. Because he was the main wage earner, the husband felt he was entitled to use any and all of their remaining funds to continue his lifestyle. The wife and her attorney bonded instantly as they called the husband "narcissistic" and accused him of attempting to control the divorce process. The husband, used to being in total control of the marital finances, now had a new adversary, his wife's attorney, who had declared that she "was not going to be bullied." The power struggle that ensued between the wife's attorney and the husband took on a life of its own. The case resolved with the help of an outside mediator who was called in to settle the case. The use of a neutral mediator is often the only way to deal with this type of situation.

On the other hand, parallel process can also have a strong positive effect on Collaborative interactions. Modeling a team working effectively and respectfully can have a calming influence on emotional clients, one that encourages the clients toward a genuine attitude of collaboration. In these cases, it is not unusual for the divorcing couple to gain awareness that the team has facilitated the ending of their marriage with respect and dignity. The clients have learned new interpersonal skills so they may effectively co-parent their children together afterwards.

Control

Another reason why Collaborative professionals struggle to retain their newly-acquired behavior patterns relates to the fact that acting collaboratively necessarily requires some loss of control. Each professional has long operated independently in her own domain and each is used to being in charge of process. Collaborative Process involves working as a team and teamwork means relinquishing some control to peers. This loss of control can bring about resistance and can create a sense of impotence. The lawyer may focus on particular behaviors of team members to confirm her fear that her legal expertise is not valued.

Examples of challenging behavior regarding control include:

- Attorneys who need to attend all meetings with a client, even when they meet with the neutrals;
- Attorneys who speak for a client;
- Attorneys who don't allow clients to discuss possible resolution;
- Attorneys who have difficulty complying with the client's needs or requests, especially when the attorney is convinced it would never happen in court;
- Attorneys who refuse to set further Collaborative meetings and resort to exchanging written settlement offers; and
- Attorneys who need to direct the process.

The perception of loss of control may cause the lawyer to overcompensate with legal rules or standards and unconsciously sabotage the collaboration. Other team members may also fall into reactivity which reinforces the narrative that it is the other professionals who are challenging the best outcome for the client.

Personality Traits and Team Dynamics

Personality traits are the enduring patterns of behavior, temperament, and emotions that are the distinguishing qualities or characteristics of an individual. In the Collaborative Process, we seek to blend attorneys, MHPs, and FPs into a team. Each member of the team has different personality traits, as well as significantly

diverse training, experience, and ways of conceptualizing situations. Each professional views the divorce from a different perspective and contributes his expertise to help the couple move toward a mutually acceptable settlement. Awareness of the distinct personality features of the professionals can lead to better management of team dynamics.

Character traits common to attorneys were explored in a study which collected data in 2009-2010 from nearly 2,000 lawyers at four large law firms.¹ Attorneys scored high in leadership and social skills, and were viewed as authoritarian, less subordinate, and preferring active rather than passive roles in situations. They were portrayed as less concerned about emotional issues and tended to be analytical and strategic in how they approached problem-solving. The study suggested that they are self-critical, temperamental, and task-oriented, and that they "speak their minds." Because of these traits, they can be perceived as "cold, critical, and argumentative," and can seem weak in interpersonal sensitivity. Other conclusions suggest that lawyers are "easily excitable" and can "become tense and overly critical."

MHPs are perceived as empathetic, compassionate, supportive, non-judgmental, and non-confrontational. They are trained in the variability of human behavior, listening and communication skills, and observation and interpretation of non-verbal behaviors. They tend not to be authoritarian or have control issues and are reactive rather than proactive in their interactions. When charged with the role of facilitator, not all MHPs are comfortable fulfilling that leadership position, especially if it means competing with the attorneys for the leadership role.

Financial professionals are described as organized, systematic, logical, and structured. They are detail-oriented, mathematically skilled, comfortable with numbers, and cautious. They tend to be focused on problem-solving and minimize emotional influences. They value honesty and are ethically focused. Their view of settlement may not incorporate the emotional needs of the family.

Despite these differences, the Collaborative Process should ideally lead to the perfect union of legal, mental health, and financial professionals working together. The caveat, of course, is that not all personalities work well together. Each professional has his own personality style and mindset. Each individual has her own ego, problems, and biases. The expectation that this new professional team, whose members may not be familiar with each other, can meld together seamlessly into the newly-formed group, may be impossible to fulfill. Frank discussion of the structure, needs, and roles of each participant in a pre-team meeting is critical to the realization of effective teamwork. The ultimate success or failure of the collaboration may well depend upon it.

Emotions

The emotional status of the couple and their relationship with each other can also have a significant influence on the entire process. Any emotional discord can be either exacerbated or diffused by the actions, words, and deeds of any member of the team. Guidance given by the professionals in their private meetings can also inadvertently damage or heal the fragile working bond between a couple drawn to the hope of a non-combative divorce.

Examples that may escalate the conflict between the couple include:

- Attorney or team member's covert collusion with a client against the spouse regarding significant issues;
- Attorney or team member's covert corroboration in the vilification of the spouse;
- Endorsement that a client has the right to be heard in a Collaborative meeting despite the potential volatility of a remark;
- Forwarding emails marked "professionals only" to a client; and
- Forwarding or sending emails to a client that contain inflammatory information about a spouse or a team member.

Examples that can defuse the conflict between the couple include:

- Reframing an emotional conflict into a positive outcome;

- Responding calmly and rationally to a dispute;
- Avoiding jumping to a conclusion or judgment;
- Using I messages and active listening; and
- Developing options and solutions to resolve issues.

In a divorce process, in which emotions play a significant role, the probability of emotions spinning out of control is significantly increased when the professionals react negatively or non-collaboratively. This occurrence needs to be immediately identified, addressed and managed by the team through the debriefing process, or by taking a break, if necessary.

Trust and Team Dynamics

Building a strong Collaborative team depends on several important components. The most important element is the establishment of trust and mutual respect between the team members. The cornerstones of the Collaborative Process – commitment to the process, honesty, respect, and transparency – depend on this trust. All members agree to share information openly and freely and not fall back into traditional positional tactics. The team shares the goal of deeper resolution so must establish clear roles and responsibilities to best support the clients. There needs to be accountability for the actions of each professional and an opportunity to discuss and resolve internal disputes. Building trust requires time and vulnerability, especially when starting a new Collaborative matter with new colleagues. Trust is easily broken and difficult to repair. Staying focused on the goal of helping clients can help the team achieve its best result in a civil and respectful manner.

True Potential

Since January 2014, the Florida Academy of Collaborative Professionals, in conjunction with the International Academy of Collaborative Professionals, has been collecting data on Collaborative family law cases in Florida. In preliminary findings, 49 surveys submitted through December 2015 identified several factors that were determined to cause a Collaborative case to be considered difficult or cause the case to terminate. Factors included "lack of trust between the professionals, lack of teamwork, and different approaches or styles of

advocacy.” Despite some of the difficulties, 84% of Collaborative cases reached conclusion with a full settlement agreement.

Given that any one of a multitude of factors can derail a Collaborative matter, what can be done to prevent a case from unraveling? Can the mere knowledge and understanding of why dedicated Collaborative professionals are not always able to remain Collaborative be the solution? Or is there a more deliberate structure that needs to be imposed on the team? What can be done to prevent Collaborative professionals from acting non-collaboratively? What can be done to avoid any one of us from acting like a wolf in sheep’s clothing?

What the Professionals Can Do Before a Collaborative Matter Begins

When your Collaborative team is assembled, it is important to recommend to clients professionals who have a high likelihood of compatibility, who not only have been trained in the Collaborative Process, but who have an awareness of the shift in perspective needed to do this work well. It is essential to have a pre-process team meeting of the professionals before the case has begun, even if it is not billed to the clients. This informal meeting can establish a framework within which the team can operate in an effective mode. It can be a friendly introduction for new members to meet each other and can open the conversation for future management of inter/intra team dynamics.

The following checklists can provide suggestions when forming a Collaborative team.

First, choose your Collaborative teammates carefully:

- Choose professionals who have been trained in the Collaborative Process;
- Choose professionals who can check adversarial behaviors at the door;
- Choose professionals who are able to make the paradigm shift;
- Choose members who demonstrate respect for the other professionals;
- Choose professionals who can guide the clients through the Collaborative Process;

- Choose professionals who will attend and participate in pre- and post-team meetings and debriefs;
- When a good team is assembled, use that team, especially if you anticipate a difficult case;
- Know your own buttons;
- Know your limitations including not taking on cases beyond your skill level; and
- Identify red flags and share these in professional team meetings.

Second, have a professional pre-process meeting and discuss the following:

- The role, expectations, and experience of each team member;
- Whether or not it is necessary to discuss how professional fee disparities will be handled;
- How professional pre-team meetings will be conducted;
- How Collaborative meetings will be conducted, including:
 - Where the meetings will occur;
 - Who will write and distribute the agenda;
 - Who will take minutes;
 - How the minutes will be distributed;
 - When the clients will receive the minutes;
 - How emails will be handled, including:
 - Who will get them;
 - Whether emails will be designated as “For Professionals Only”;
 - Whether they will be shared with the clients, if so, when;
 - How information sharing will be conducted;
 - How often professional debriefings will occur;
 - How professional debriefings will be conducted;
 - How each professional will receive feedback/critique from other team members;
 - Where and when each team member prefers to receive feedback; and
 - How the team will handle and resolve intra-team conflicts.

Screen clients to determine if they have the capacity for the collaborative work. Clients being considered for Collaborative divorce should be evaluated as to whether they demonstrate:

- Reasonable expectations;
- Willingness to listen to the other spouse;
- Willingness to participate;
- Willingness to be honest;
- Preferences for privacy;
- Willingness to reach a fair, not one-sided, settlement;
- Personal motivation;
- Ability to cooperate respectfully;
- Ability to share all relevant information;
- Ability to acknowledge fault;
- Ability to take responsibility for their own choices;
- Willingness to pass up their day in court;
- Comfort in working with the other spouse in the same room;
- Willingness to disclose sensitive information; and
- Willingness to work with and not against the other spouse for mutually acceptable results.

Other considerations include:

- A power imbalance between the spouses;
- A history of domestic violence; and
- Whether the client continues to insist that the divorce proceed in an adversarial manner.

None of these factors, on its own will necessarily disqualify clients from the Collaborative Process, but difficulties and challenges identified in assessment may help determine the professional team composition.

What If You Are Collaborating with a “Wolf in Sheep’s Clothing”?

Despite extensive precautions, there may well come a time when one of the professionals reverts to challenging behavior. The following suggestions may be helpful when this happens:

- Give authentic feedback to the professional without blaming or shaming by giving objective, concrete examples of the challenging interaction;
- Ask for help from the MHP to address what you may be doing to provoke the attitude;
- Use the team debrief to address the problem with the other professional in a safe setting; and
- Debrief! Debrief! Debrief!

The effectiveness of a team debrief rests strongly on the creation of a supportive, learning environment of trust and safety. It needs to be a safe place to express feelings and encourage authentic feedback and communication. The debrief should occur immediately after the team meeting or soon thereafter. It should begin with some type of positive reinforcement, a review of the goals of the meeting, and a discussion about what happened. Each professional should be given the opportunity to explore and deal with the feelings experienced during the Collaborative meeting. There should be direction provided by the MHP for improvement and acknowledgement that mistakes are a part of the learning process. The debrief should not be used as a platform for criticism, blame, or finger-pointing.

Another resource is the Collaborative practice group. The team at impasse may discuss the issue with an outside, objective, experienced collaboratively-trained colleague who will preserve the confidentiality of the case. Utilize that person in any of the following ways:

- As a consultant to the professional team to defuse non-collaborative behavior;
- To work in conjunction with the MHP facilitator and coach;
- As a neutral mediator to help settle the case; and/or
- As a mentor to the “wolf”.

Conclusion

The intent of this chapter is to raise the awareness of Collaborative professionals regarding challenging professional behavior in Collaborative cases. The paradigm shift, described so casually as an easy conversion, is actually a very complex and difficult transition to make

and sustain. It may be best described as a continuum that requires constant awareness and vigilance as we work on cases. It is hoped that, by understanding the interaction and confluence of many factors that impact the emotionally charged environment of a divorce for both the clients and their professionals, the team itself can correct and redirect these non-collaborative lapses. The Collaborative Process truly offers the public an opportunity to save familial relationships after a divorce. In spite of growing pains and occasional slips, the Collaborative model is still an important, client-centered model of divorce that focuses on not causing harm. By utilizing the power of a well-trained, carefully selected team, instances of challenging behavior can be minimized and eventually overcome.²

Notes

¹ Richard, Larry Dr., "Herding Cats: The Lawyer Personality Revealed," LAWPRO Magazine "Personality & Practice," Winter 2008 (Vol. 7 no. 1).

² Anderson, M. "The role of group personality composition in the emergence of task and relationship conflict within groups." *Journal of Management and Organization* 15.1 (2009): 82-96. ABI/INFORM Global, ProQuest. Web. 1 Dec. 2010. *Handbook of Advances in Trust Research*, edited by Bachmann, R. and Zaheer, A., Chapter 2. The role of trust in negotiation processes, Roy J. Lewicki and Beth Polin, 2012, pp. 29-54.

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Lana is a licensed psychologist, marriage and family therapist, Florida Supreme Court certified family mediator and parent coordinator in private practice in the Coral Gables, Florida area for the past 30 years. She is a member of IACP and serves on the Trainers Network and Development Committee. She is a member of the Florida and Miami Collaborative Practice Groups and serves on both Boards and various committees. She co-authored the chapter on "Collaborative Law" in the Florida Bar CLE book *Dissolution of Marriage*. She is a principal and founder of "Florida Collaborative Trainers" and has presented basic/intermediate and advanced training workshops to professionals throughout Florida and nationally.

She is an Adjunct Professor and co-taught the first "Collaborative Divorce" workshop at the University of Miami Law School. She has worked extensively in Collaborative divorce cases as the neutral mental health professional/facilitator.

IACP Client Experience... (continued from page 11)

Research Committee since its inception in 2005, and was a leader of the large-scale study conducted by the IACP from 2006-2010. Linda has presented extensively on and written about this study. Linda has also been active in the Collaborative community in the State of Minnesota, serving four years on its Board of Directors, including as its President, and chairing several committees. Currently, she serves on the International Academy of Collaborative Professionals (IACP) Board of Directors as the Past President.

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IACP supports Collaborative Practice as a conflict resolution option worldwide by:

- *establishing and upholding the essential elements, ethical and practice standards of Collaborative Practice;*
- *fostering professional excellence by educating and providing resources to Collaborative practitioners;*
- *leading and integrating the Collaborative community; and*
- *promoting the growth of Collaborative Practice.*

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